



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2019

Ms. Sandra D. Carpenter
General Counsel
Round Rock Independent School District
1311 Round Rock Avenue
Round Rock, Texas 78681

OR2019-10629

Dear Ms. Carpenter:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 760747 (ORR# TPIA-2019-237).

The Round Rock Independent School District (the "district") received a request for information pertaining to invoices for attorney fees in regards to the requestors' child. The district claims some of the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments submitted by one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted information consists of attorney fee bills that are subject to section 552.022 of the Government Code. Section 552.022(a)(16) provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public

¹Although the district also raises section 552.101 of the Government Code, it has not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume the district no longer asserts this exception. *See* Gov't Code §§ 552.301, .302.

information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(16). Sections 552.103, 552.107, and 552.111 of the Government Code are discretionary and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 6 (2002) (section 552.107 is not other law for purposes of section 552.022), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold any of the submitted information under section 552.103, 552.107, or 552.111. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider the assertion of the attorney-client privilege under Texas Rule of Evidence 503.

Texas Rule of Evidence 503(b)(1) provides the following:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client's representative and the client's lawyer or the lawyer's representative;

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

Tex. R. Evid. 503(b)(1). A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is made to further the rendition of professional legal services to the client or reasonably necessary to transmit the communication. *Id.* 503(a)(5).


Accordingly, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must 1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; 2) identify the parties involved in the communication; and 3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. *See* Open Records Decision No. 676 (2002). Upon a demonstration of all three factors, the entire communication is confidential under rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

The district asserts the information it has marked under rule 503 consists of a confidential communication between an attorney for and employees or officials of the district that was made for the purpose of rendering professional legal advice. It also asserts the communication was intended to be confidential and its confidentiality has been maintained. Upon review, we find the district has established some of the information at issue, which we have marked, consists of privileged attorney-client communications that the district may withhold under rule 503. However, we find the district has failed to demonstrate the remaining information at issue consists of privileged attorney client communications. We note an entry stating a memorandum or an email was prepared or drafted does not demonstrate the document was communicated to the client. Thus, we find the district has failed to demonstrate the remaining information at issue was communicated and it does not reveal a client confidence. Accordingly, the district may not withhold any of the remaining information at issue under rule 503. Therefore, the district may withhold the information we have marked under Texas Rule of Evidence 503, but it must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 760747

Enc. Submitted documents

c: Requestor
(w/o enclosures)