



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 8, 2020

Ms. Amber K. King
General Counsel
Lake Travis Independent School District
3322 Ranch Road 620 South
Austin, Texas 78738

OR2020-10550

Dear Ms. King:

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# 821404.

The Lake Travis Independent School District (the "district") received eighteen requests from the same requestor for information pertaining to specified district legal services. You state the district will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You claim portions of the submitted information are privileged under Texas Rule of Evidence 503. We have considered your argument and reviewed the submitted information.

Initially, section 552.301(e)(1)(D) states a governmental body asking for an attorney general decision must, within fifteen business days of receiving a request, provide the attorney general with "a copy of the specific information requested, *or submit representative samples of information if a voluminous amount of information was requested*["]." Gov't Code § 552.301(e)(1)(D) (emphasis added). We note you have submitted a voluminous amount of information rather than a representative sample. The

¹ The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

information submitted includes several hundred pages of attorney fee bills. We have identified and reviewed a representative sample of the voluminous information submitted.²

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).

² To the extent the district identifies confidential information subject to a provision not addressed in this ruling, the district should contact the Open Government Hotline.

You state the information you marked consists of communications between attorneys for the district and district employees and officials that were made for the purpose of facilitating the rendition of professional legal services to the district. You state these communications were intended to be confidential and have remained confidential. Upon review, we find you have established the information we marked constitutes privileged attorney-client communications under rule 503. Thus, the district may withhold the information we marked under Texas Rule of Evidence 503. However, we find the district has failed to demonstrate the remaining information it marked consists of privileged attorney-client communications. We note an entry stating a memorandum or an e-mail was prepared or drafted does not demonstrate the document was communicated to the client. Thus, we find the district has not demonstrated the remaining information at issue was communicated and it does not reveal a client confidence. Accordingly, the district may not withhold any portion of the remaining information at issue under rule 503. The district 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jxd

Ref: ID# 821404

Enc. Submitted documents

c: Requestor
(w/o enclosures)