



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 16, 2022

Ms. Sheila Vershier
Legal Specialist
Pearland Independent School District
P.O. Box 7
Pearland, Texas 77588-0007

OR2022-07727

Dear Ms. Vershier:

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# 933991 (PISD PIC ID: 2021-12-09.003).

The Pearland Independent School District (the "district") received a request for information pertaining to certain legal expenses of the district, including those related to a specified case. The district states it will release some information to the requestor. The district claims some of the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions the district claims and reviewed the submitted information.

Initially, the district acknowledges, and we agree, the submitted information consists of attorney fee bills that are subject to section 552.022(a)(16) of the Government Code. Section 552.022(a)(16) provides for required public disclosure of "information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege" unless the information is expressly confidential under the Act or other law. Gov't Code § 552.022(a)(16). The district seeks to withhold portions of the submitted information under sections 552.103 and 552.107 of the Government Code. However, sections 552.103 and 552.107 are discretionary in nature 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 Gov't Code § 552.103); *see also* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the district may not withhold any of the submitted information under section 552.103 or section

552.107 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence are “other law” within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider the district’s assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the information it marked.

Texas Rule of Evidence 503(b)(1) provides as follows:

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 it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must (1) show 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 the communication is confidential by explaining it was not intended to be disclosed to third persons and it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document 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 submitted fee bills include privileged attorney-client communications between the district's attorneys and district officials and employees that were made in furtherance of the rendition of professional legal services to the district. The district states these communications were intended to be, and have remained, confidential. Based on these representations and our review, we find the district has established some of the information it marked constitutes attorney-client communications under rule 503. Accordingly, the district may withhold the information we have marked pursuant to rule 503 of the Texas Rules of Evidence. However, we find some of the communications at issue are with individuals the district has not demonstrated are privileged parties. Further, we find some of the information at issue does not document a communication. We note an entry stating a memorandum or e-mail was prepared or drafted does not demonstrate the document was communicated to the client. Thus, the district may not withhold any portion of the remaining information it marked under rule 503. Consequently, 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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/jxd

Ref: ID# 933991

Enc. Submitted documents

c: Requestor
(w/o enclosures)