



January 31, 2001

Ms. Kelli H. Karczewski
Schwartz & Eichelbaum, P.C.
P.O. Box 3685
San Angelo, Texas 76902

OR2001-0377

Dear Ms. Karczewski:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 143263.

The San Angelo Independent School District (the "district"), which you represent, received two requests from the same individual for invoices for legal services from two law firms during specified time intervals. You claim that portions of the requested information are excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

You acknowledge that much of the requested information is subject to required public disclosure under section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under 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) (emphasis added). You claim that portions of the submitted invoices are protected by the attorney-client privilege under section 552.107 of the Government Code.

Section 552.107 provides in relevant part that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]

Gov't Code § 552.107(1). Although the scope of section 552.107(1) would appear to be co-extensive with that of rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, which prohibits an attorney from divulging "confidential information," this office has concluded that such an interpretation of rule 1.05 would be in potential conflict with the purposes of the Act. *See* Open Records Decision No. 574 at 4-5 (1990) (construing predecessor statute). Accordingly, this office has determined that section 552.107(1) protects only what rule 1.05 describes as "privileged" information, *i.e.*, information that represents confidential communications between attorney and client. *Id.* at 5. "Unprivileged" information, as defined by rule 1.05, is not excepted from disclosure under section 552.107(1). *Id.*

Thus, section 552.107(1) excepts from disclosure only factual information or requests for legal advice communicated by the client to the attorney and legal advice or opinion rendered by the attorney to the client or to an associated attorney in the course of rendering legal services to the client. *Id.* at 7-8. In Open Records Decision No. 574 (1990), this office also stated:

In general, the attorney's mere documentation of calls made, meetings attended, or memos sent is not protected under [the statutory predecessor to section 552.107(1)], if no notes revealing the attorney's legal advice or the client's confidences are included. Such documentation simply does not embody attorney-client communication.

Id. at 7; *see also* Open Records Decision No. 589 (1991) (applying same analysis to attorney fee bill).

In this instance, you assert that highlighted portions of the submitted invoices reveal the substance of privileged communications between the district and its attorneys and between attorneys representing the district. Having considered your arguments and carefully examined the submitted information, we find that portions of that information constitute privileged attorney-client communications. We have marked the information that the district may withhold under section 552.107(1). The rest of the submitted information is not excepted from disclosure under section 552.107(1).

We also note that the submitted invoices contain information that appears to be within the purview of sections 552.026 and 552.114 of the Government Code and the federal Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). "Education records" are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 at 3 (1982), 206 at 2 (1978).

Section 552.114 of the Government Code requires the district to withhold "information in a student record at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office generally has treated "student record" information under section 552.114 as the equivalent of "education record" information that is subject to FERPA. *See* Open Records Decision No. 634 at 5 (1995).

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

In this instance, we are unable to identify particular students or parents of students whose names appear in the submitted records. Nevertheless, we note that unless the district has authority under FERPA to release information that personally identifies a particular student, the district must withhold all such information under the federal law.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

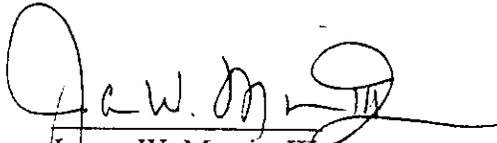
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 143263

Encl: Submitted documents

cc: Mr. Herman Gomez
P.O. Box 62054
San Angelo, Texas 76906-2054
(w/o enclosures)