



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 6, 2004

Ms. Ellen B. Huchital  
McGinnis, Lochridge & Kilgore, LLP  
1221 McKinney Street, Suite 1221  
Houston, Texas 77010

OR2004-3721

Dear Ms. Huchital:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200982.

The Eanes Independent School District (the "district"), which you represent, received a request for legal invoices received for specified periods; information regarding the search for new legal representation for the district; and budget and actual expenses for legal services for specified periods. You state that you have released some of the requested information. You also state that you have no responsive information regarding portions of the request. We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You claim, however, that portions of the remaining requested information are excepted from disclosure under section 552.114 of the Government Code, as well as the attorney-client privilege under Texas Rule of Evidence 503. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's concern related to previous requests submitted to the district. The requestor has provided copies of requests she made to the district on January 23, 2004 and again on January 29, 2004 wherein the requestor sought "documents that show or reflect legal expenses received to date." The requestor asserts that at that time

she did not receive all of the responsive documents to her request. Additionally, she asserts that the district may have exempted a portion of the requested information without asking for an opinion from our office. We note that the December legal invoices submitted to this office by the district have previously been released to the requestor. Section 552.007 of the Government Code provides as follows:

(a) [The Act] does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.

(b) Public information made available under Subsection (a) must be made available to any person.

Gov't Code §552.007(a), (b). Therefore, if a governmental body or its public information officer releases information to the public, the governmental body must release the information to future requestors as well unless the governmental body is required to withhold the information by law. The attorney-client privilege raised by the district is a discretionary exception that grants a governmental body the discretion to either withhold or release information. *See* Open Records Decision Nos. 663 (1999), 630 at 4 (1994). This provision does not require that a governmental body withhold information. Because the district is not required to withhold the information at issue from the public and the district has already released the December legal invoices to the requestor, we find that the district must again release the December legal invoices that have been previously released to the requestor.

Whether any additional documents responsive to the requestor's first request existed at that time is the subject of a complaint pending with this office's Compliance and Enforcement Section. We will defer the resolution of this issue to the Compliance and Enforcement Section.

We next note that the remaining submitted information consists of attorney fee bills that are subject to section 552.022(a) of the Government Code, which provides in pertinent part as follows:

(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). Thus, the information in the submitted attorney fee bills must generally be released unless it is expressly confidential under other law or protected by the attorney-client privilege. The Texas Supreme Court has held that the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). The attorney-client privilege is found at Rule 503 of the Texas Rules of Evidence.

Rule 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 for the purpose of facilitating the rendition of professional legal services to the client:

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

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

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

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

Tex. R. Evid. 503(b)(1); *see id.* 503(a)(2), (a)(4) (defining "representative of the client," "representative of the lawyer.") A communication is "confidential" if 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).

A governmental body seeking to withhold information from public disclosure pursuant to the attorney-client privilege must: (1) demonstrate that the document at issue is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) demonstrate 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. Open Records Decision No. 676 (2002).

Upon review of your arguments and the remaining submitted information, we find you have demonstrated that the information you have marked in the remaining attorney fee bills is protected by the attorney-client privilege. Accordingly, the district may withhold the information it has marked in the January legal invoices under Rule 503 of the Texas Rules of Evidence.<sup>1</sup>

In summary, the district must release the December legal invoices that it has previously released to the requestor. The district may withhold the information it has marked in the January legal invoices under Rule 503 of the Texas Rules of Evidence. The remaining information must be released to the requestor.

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

---

<sup>1</sup> Because our ruling is dispositive, we need not address your remaining argument against disclosure.

body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/seg

Ref: ID# 200982

Enc. Submitted documents

c: Ms. Dianna Pharr  
2204 Westlake Drive  
Austin, Texas 78746  
(w/o enclosures)