



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2006

Ms. Christine Badillo
Walsh, Anderson, Brown, Schulze, & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2006-10089

Dear Ms. Badillo:

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# 256880.

The Lake Travis Independent School District (the "district"), which you represent, received sixty-four requests for information from the same requestor. You state that the district has released information responsive to forty-four of the requests. You state that the district has no information responsive to eight of the requests.¹ You claim that the submitted information is excepted from disclosure under sections 552.107, 552.111, 552.117, 552.136, and 552.137 of the Government Code and rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.²

Initially, we note that the United States Department of Education Family Compliance Office recently informed this office that the Family Education Rights and Privacy Act ("FERPA"),

¹We note that 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 Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²Although you raise section 552.024 of the Government Code, we note that section 552.024 is not an exception to public disclosure under chapter 552 of the Government Code. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. See Gov't Code § 552.024.

20 U.S.C. § 1232g, does not permit state and local education authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. Consequently, state and local education authorities that receive a request for education records under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You have submitted, among other things, redacted education records for our review. You state that the district will withhold the redacted information, which consists of personally identifiable information, pursuant to FERPA. Accordingly, we will address the applicability of the claimed exceptions to the remainder of the submitted information.

Next, we note that portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022 provides in pertinent 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:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

...

(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)(3), (16). The submitted information contains attorney fee bills and a receipt for payment of legal services. Pursuant to section 552.022, this information must be released, unless it is expressly confidential under other law. You assert that this information is protected by section 552.107 of the Government Code. Section 552.107 is a discretionary exception under the Act and does not constitute “other law” for purposes of section 552.022. Open Records Decision No. 676 at 5-6 (2002) (attorney-client privilege under section 552.107(1) may be waived); *see* Open Records Decision No. 630 at 4 (1994) (predecessor to section 552.107(1) may be waived); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). However, the Texas Supreme Court has held that “[t]he Texas Rules of Civil Procedure and 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 your arguments under rule 503 of the Texas Rules of Evidence for the information subject to section 552.022.

Rule 503 of the Texas Rules of Evidence encompasses the attorney-client privilege and 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). 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). Thus, 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. 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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You assert that the submitted fee bills include confidential communications between representatives of the district and its attorneys in furtherance of "the rendition of professional legal services." Based on your representations and our review of the submitted information, we find that you have established that some of the information you seek to withhold on this basis is protected by the attorney-client privilege. Some of the information you have marked, however, documents communication to individuals who you have not identified as clients,

client representatives, lawyers, or lawyer representatives. Thus, you have failed to demonstrate that this information documents privileged attorney-client communications. Therefore, we have marked the information the district may withhold pursuant to rule 503 of the Texas Rules of Evidence. However, we find that you have failed to establish the applicability of rule 503 to any of the remaining information at issue. Therefore, none of the remaining information at issue may be withheld on this basis.

We next address your claim under section 552.111 of the Government Code. This section excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov’t Code § 552.111. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See also *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5.

You explain that the submitted documents at Tabs 12 through 35 consist of memoranda drafted by the district’s Superintendent for review by the district’s Board of Trustees. You state that these documents “contain the Superintendent’s opinions and recommendations for action [that are] critical to the Board’s policymaking process and play a key role in [the] Board’s ultimate decision on policy issues.” Having considered your arguments and reviewed the information at issue, we agree that some of this information, which we have marked, may be withheld under section 552.111. However, we find that you have not explained how the remainder of this information constitutes internal communications of the district reflecting the deliberative or policymaking processes of the district. As such, none of the remaining information at issue may be withheld under section 552.111.

Next, we address your claim that portions of the remaining information are excepted from required public disclosure under section 552.117(a)(1) of the Government Code. This section excepts from disclosure the home addresses and telephone numbers, personal cellular telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). You inform us that the employees whose information is at issue timely elected to keep the information confidential under section 552.024. As such, the district must withhold the information you have marked pursuant to section 552.117(a)(1).

Next, you claim that portions of the remaining information are excepted from disclosure under section 552.136 of the Government Code. Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. The district must, therefore, withhold the account numbers and routing information you have marked, as well as the additional information we have marked, under section 552.136.

Finally, section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail addresses you have marked are not of a type specifically excluded by section 552.137(c). You do not inform us that the owner’s of the e-mail addresses have affirmatively consented to their release. *See id.* § 552.137(b). Therefore, the district must withhold the e-mail addresses you have marked under section 552.137.

In summary, the district may withhold the information we have marked under rule 503 of the Texas Rules of Evidence, and the information we have marked under section 552.111 of the Government Code. The district must also withhold the information you have marked pursuant to section 552.117(a)(1) of the Government Code, the marked bank account and access device numbers under section 552.136 of the Government Code, and the e-mail addresses you have marked under section 552.137 of the Government Code. The remaining submitted 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

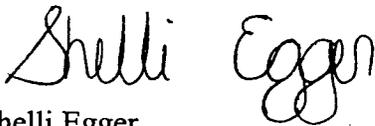
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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 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 Office of the Attorney General 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,



Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 256880

Enc. Submitted documents

c: Mr. David Lovelace
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(w/o enclosures)