

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2007

Ms. Renee Smith Byas
Vice Chancellor and General Counsel
North Harris Montgomery Community College District
5000 Research Forest Drive
The Woodlands, Texas 77381-4399

OR2007-03309

Dear Ms. Byas:

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# 278574.

The North Harris Montgomery Community College District (the "district") received a request for copies of certain attorney fee bills, certain bills for public relations services, and all attorney fee bills and communications from a named attorney from November 30, 2006 until the date of the request. You state that the district does not maintain the requested bills for public relations services.¹ You seek to withhold the submitted information under sections 552.103 and 552.107 of the Government Code and Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.

We first note that the submitted information consists of attorney fee bills that are subject to section 552.022 of the Government Code. Section 552.022(a) provides for the 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 other law. Gov't Code § 552.022(a)(16). Although you seek to withhold information contained in the attorney fee bills under sections 552.103 and 552.107 of the Government Code, those sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental

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 or to prepare new information in response to a request for information. *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).

body may waive Gov't Code § 552.103); Open Records Decision 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (discretionary exceptions generally). As such, sections 552.103 and 552.107 are not other laws that make information confidential for the purposes of section 552.022(a)(16). Therefore, the district may not withhold any of the information under section 552.103 or section 552.107.

The Texas Supreme Court has held, however, that 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). The attorney-client privilege also is found at Texas Rule of Evidence 503. Accordingly, we will consider your assertion of this privilege under rule 503 with respect to the information in the attorney fee bills.

Texas Rule of Evidence 503 enacts the attorney-client privilege. 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). 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 indicate that the submitted attorney fee bills contain confidential communications between the district's attorneys and the district that were made for the purposes of facilitating the rendition of professional legal services to the district. Based on your representations and our review of the submitted information, we agree that the attorney fee bills contain information that reveals confidential communications between privileged parties. Accordingly, we have marked the information that is protected by the attorney-client privilege and may therefore be withheld pursuant to rule 503 of the Texas Rules of Evidence. Some of the remaining information, however, does not consist of or reveal confidential attorney-client communications. Further, some of the remaining information documents communication to individuals whom you have not identified as clients, client representatives, lawyers, or lawyer representatives. Thus, you have failed to demonstrate that any of this remaining information documents privileged attorney-client communications. Accordingly, none of the remaining information may be withheld under Texas Rule of Evidence 503.

We note that the remaining information includes a bank account number. Section 552.136(b) 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.”² Gov't Code § 552.136. Thus, the district must withhold the bank account number that we have marked under section 552.136 of the Government Code.

In summary, the district may withhold the information we have marked under Texas Rule of Evidence 503, and the district must withhold the bank account number under section 552.136 of the Government Code. The remaining information must be released to the requestor.

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

²Unlike other exceptions to disclosure under the Act, this office will raise section 552.136 on behalf of a governmental body, as this exception is mandatory and may not be waived. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/eb

Ref: ID# 278574

Enc. Submitted documents

c: Mr. Fred Blanton
3011 East Richey Road, Bldg. 1
Humble, Texas 77338
(w/o enclosures)

CAUSE NO. D-1-GN-07-001077

LONE STAR COLLEGE SYSTEM
DISTRICT,
Plaintiff,

V.

GREG ABBOTT, ATTORNEY GENERAL
FOR THE STATE OF TEXAS,
Defendant,

§ IN THE DISTRICT COURT OF
§
§
§
§ TRAVIS COUNTY, TEXAS
§
§
§
§ 126th JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

JL DEC 03 2008
At 8:53 A
M.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff, Lone Star College System District (Lone Star), and Defendant, Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552 (West 2004 & Supp. 2006). The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor was sent reasonable notice of this setting and of the parties' agreement that Lone Star may withhold the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor, Fred Blanton, has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, specifically, the descriptions, or parts thereof, of services rendered, in the fee bills received by Lone Star, for the periods of July, 2006 thru February 24, 2007,

from Andy Taylor, as marked by the Office of the Attorney General (in the document, titled "Version 9/10/08, Information at Issue"), is excepted from disclosure by Tex. R. Evid. 503.

2. Lone Star may redact the descriptions, or parts thereof, in the attorney fee bills as enumerated in ¶ 1 of this Agreed Final Judgment, along with any other information in the attorney fee bills that the Attorney General determined was excepted from disclosure in OR2007-03309.

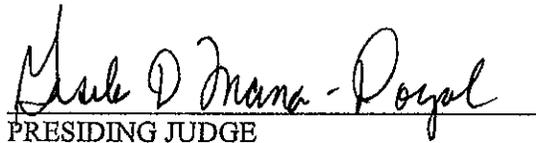
3. Lone Star shall release the attorney fee bills and related communications, with the information described in ¶¶ 1 and 2 redacted, to the requestor promptly upon receipt by Lone Star of this Agreed Final Judgment signed by the Court.

4. All costs of court are taxed against the parties incurring the same;

5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 3rd day of December, 2008.


PRESIDING JUDGE

APPROVED:


MERRI SCHNEIDER-VOGEL
Bracewell & Giuliani LLP
711 Louisiana Street, Suite 2300
Houston, Texas 77002-2770
Telephone: (713) 223-2300
Fax: (713) 221-1212
State Bar No. 17794600
ATTORNEY FOR PLAINTIFF


BRENDA LOUDERMILK
Chief, Open Records Litigation
Administrative Law Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4292
Fax: (512) 320-0167
State Bar No. 12585600
ATTORNEY FOR DEFENDANT