



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2008

Ms. Laura C. Rodriguez
Walsh, Brown, Schulze & Aldridge, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2008-09142

Dear Ms. Rodriguez:

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# 314925.

The Northside Independent School District (the "district"), which you represent, received a request for all of the superintendent's incoming and outgoing e-mails on April 9, 2008.¹ You state that a portion of the submitted information is not subject to the Act. You claim that portions of the submitted information are excepted from disclosure under sections 552.103, 552.107, and 552.137 of the Government Code and privileged under Texas Rule of Evidence 503.² We have considered your arguments and reviewed the submitted information.

Initially, we note that you contend that portions of the submitted information are not subject to the Act. The Act is applicable to "public information," as defined by section 552.002 of the Government Code. Section 552.002 provides that "public information" consists of

¹You inform us that the district sought and received clarification of the request from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). We also note that section 552.107 does not encompass Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct. *See* ORD No. 676 at 4.

“information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” Gov’t Code § 552.002(a)(1)-(2). Thus, virtually all of the information that is in a governmental body’s physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The district contends that the e-mails in AG-0013 through AG-0027 are personal in nature and do not constitute public information. After reviewing the information at issue, we agree that the e-mails at issue are not subject to the Act and need not be disclosed to the requestor. *See* Open Records Decision No. 635 at 4(1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving de minimis use of state resources).

We next note that AG-0007 through AG-0010 are subject to section 552.022 of the Government Code. Specifically, this section provides that “information that is in a bill for attorney’s fees and that is not privileged under the attorney-client privilege” is public and may not be withheld unless it is expressly confidential under other law. Gov’t Code § 552.022(a)(16). Thus, information contained in attorney fee bills must be released under section 552.022(a)(16) unless it is expressly confidential under other law. Although you raise sections 552.103 and 552.107 of the Government Code, these sections are discretionary exceptions to disclosure that protect the governmental body’s interests and may be waived. *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 section 552.103); *see also* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). 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 argument under rule 503 of the Texas Rules of Evidence for the submitted attorney fee bills in AG-0007 through AG-0010.

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 district administrators and attorneys for the district and you have identified each of these individuals. Further, you explain that these communications were made for the purpose of facilitating the rendition of professional legal services to the district. We understand that the communications have remained confidential. Based on your representations and our review, we find you have established that the portions of AG-0007 through AG-0010 we have marked are protected under the attorney-client privilege and may be withheld pursuant to rule 503 of the Texas Rules of Evidence.

Next, we consider your section 552.107 claim for the submitted information that is not subject to section 552.022 of the Government Code. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. ORD No. 676 at 6-7. The elements of the privilege under section 552.107 are the same as those for rule 503 outlined above.

You state that AG-0001 through AG-0006, AG-0011, and AG-0012 consist of confidential communications between district administrators and attorneys for the district and you have identified each of these individuals. Further, you explain that these communications were made for the purpose of facilitating the rendition of professional legal services to the district. We understand that the communications have remained confidential. Based on our review of your representations and the submitted communications, we find that you have demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, we conclude that the district may withhold this information pursuant to section 552.107(1) of the Government Code.³

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 at issue are not of a type specifically excluded by section 552.137(c). Therefore, the district must withhold the e-mail addresses we have marked in accordance with section 552.137 of the Government Code, unless the district receives consent for their release.

In summary, the e-mails in AG-0013 through AG-0027 are not subject to the Act. The district may withhold the portions of AG-0007 through AG-0010 we have marked pursuant to rule 503 of the Texas Rules of Evidence. The district may withhold AG-0001 through AG-0006, AG-0011, and AG-0012 pursuant to section 552.107(1) of the Government Code. The district must withhold the e-mail addresses we have marked in AG-0028, AG-0034, AG-0042, AG-0051, and AG-0056 in accordance with section 552.137 of the Government Code, unless the district receives consent for their release. The remaining information must be released.⁴

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 file suit in

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁴We note that the information being released contains partial social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/mcf

Ref: ID# 314925

Enc. Submitted documents

c: Mr. Raymond Tamayo
10734 Vollmer Lane
San Antonio, Texas 78254-1757
(w/o enclosures)