



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2008

Ms. Jennifer A. Powell
Schwartz & Eichelbaum
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4201 West Parmer Lane, Suite A-100
Austin, Texas 78727

OR2008-09285

Dear Ms. Powell:

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# 315652.

The Haskell Consolidated Independent School District (the "district"), which you represent, received three requests from the same requestor for five categories of information related to a specified grievance. You state that the district has released most of the requested information to the requestor, but you claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code and privileged under Texas Rule of Evidence 503. We have considered your arguments 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 note that the requestor informs this office that he does not object to the redaction of personal financial information related to the district superintendent. Accordingly, the information you seek to withhold in Exhibit C is not responsive to the request for information. This ruling does not address the public availability of any

information that is not responsive to the requests and the district is not required to release that information in response to the requests.¹

Next, you acknowledge that the responsive information is subject to section 552.022(a)(16) of the Government Code, which provides:

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[.]

Id. § 552.022(a)(16). In this instance, the responsive information consists of attorney fee bills. Thus, the district must release this information pursuant to section 552.022(a)(16) unless it is expressly confidential under other law. The Texas Supreme Court has held that the Texas Rules of Evidence are "other law" that makes information expressly confidential for the purposes of section 552.022. Therefore, we will therefore consider your argument under Texas Rule of Evidence 503.

Rule 503 of the Texas Rules of Evidence encompasses the attorney-client privilege and provides:

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;

¹As we are able to make this determination, we need not address your argument under section 552.101 of the Government Code.

(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 district employees and representatives that were made for the purpose of facilitating the rendition of professional legal services to the district. Based on your representations and our review of the information at issue, we agree that a portion of the attorney fee bills contain information that reveals confidential communications between privileged parties. Accordingly, the district may withhold the information we have marked under Texas Rule of Evidence 503. Some of the remaining information, however, does not consist of or reveal confidential attorney-client communications. Further, some of the remaining documents contain communications to individuals whom you have not identified as clients, client representatives, attorneys, or attorney representatives. Thus, the district has failed to demonstrate how any of the remaining information constitutes confidential communications between privileged parties made for the purpose of facilitating the rendition of professional legal services. Therefore, none of the remaining responsive information may be withheld on that basis.

We note that the remaining documents contain information that is subject to section 552.136 of the Government Code.² Section 552.136 provides:

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. We have marked the checking account and routing numbers that must be withheld 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. The checking account and routing numbers we have marked must be withheld under section 552.136 of the Government Code. The remaining responsive information must be released.

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 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/mcf

Ref: ID# 315652

Enc. Submitted documents

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(w/o enclosures)