



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 30, 2008

Ms. Ellen Spalding  
Feldman, Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2008-13384

Dear Ms. Spalding:

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# 323152.

The Eanes Independent School District (the "district"), which you represent, received a request for information related to expenditures for legal representation or services for disability related matters, as well as all contracts for legal representation from May 2007 to April 2008. You state you will release some of the requested information to the requestor, but claim that portions of the submitted information are excepted from disclosure under section 552.107 of the Government Code and privileged under Texas Rule of Evidence 503.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Initially, you explain that you have redacted information that does not relate to disability matters, and thus, is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the district is not required to release that information in response to the request.

Next, you inform us that some of the responsive contracts were the subject of a previous request for information, in response to which this office issued Open Records Letter

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<sup>1</sup>Although you raise section 552.101 in conjunction with the attorney-client privilege, 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).

No. 2008-13290 (2008). We presume there has been no change in the law, facts, or circumstances on which the previous ruling is based. We therefore conclude the district may withhold or release the previously requested contracts in accordance with Open Records Letter No. 2008-13290. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments for the information that was not previously requested and ruled upon.

You acknowledge that the responsive information is subject to section 552.022 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:

...

(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 includes a contract relating to the expenditure of public or other funds by the district, which is expressly public under section 552.022(a)(3), and attorney fee bills that are made public under section 552.022(a)(16). Thus, the district must release this information pursuant to section 552.022 unless it is expressly confidential under other law. You claim this information is excepted from disclosure under section 552.107 of the Government Code. However, this section is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See* 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). Accordingly, the district may not withhold the submitted information under section 552.107 of the Government Code. The Texas Supreme Court has held, however, the Texas Rules of Evidence are "other law" that makes information expressly confidential for the purposes of section 552.022. Therefore, we will 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;

(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 information contains 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 some of the attorney fee bills and the submitted contract contain information that reveals confidential communications between privileged parties. Accordingly, except where we have marked

for release, the district may withhold the information you have marked in Exhibit B, and Exhibit C in its entirety, under Texas Rule of Evidence 503. The information we have marked for release in Exhibit B, however, does not consist of or reveal confidential attorney-client communications. Further, some of the information at issue contains 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 information we have marked for release constitutes confidential communications between privileged parties made for the purpose of facilitating the rendition of professional legal services. Therefore, none of this information may under Texas Rule of Evidence 503. As you raise no other arguments against the disclosure of this information, it must be released.

In summary, the district may continue to rely on Open Records Letter No. 2008-13290 with respect to the previously requested contracts. Except where we have marked for release, the district may withhold the information you have marked in Exhibit B and Exhibit C in its entirety under Texas Rule of Evidence 503. 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).

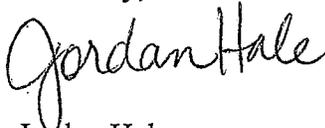
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental

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/jh

Ref: ID# 323152

Enc. Submitted documents

c: Ms. Monica Voss  
23727 Shadow Creek Court  
Katy, Texas 77494  
(w/o enclosures)