



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2008

Ms. Angela H. Robinson  
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1600 West Seventh Street, Suite 500  
Fort Worth, Texas 76102

OR2008-13964

Dear Ms. Robinson:

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# 324231.

The Tarrant County College District (the "college"), which you represent, received a request for information relating to an informal meeting and the Radio Shack acquisition. You state you have released some of the requested information. You also state you do not have a portion of the requested information.<sup>1</sup> You claim a portion of the submitted information is not subject to the Act. You also claim portions of the submitted information are excepted from disclosure under sections 552.107, 552.109, and 552.117 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence.<sup>2</sup> We have considered your arguments and reviewed the information you have submitted. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the college. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup>We note although you also raise section 552.111 of the Government Code, you make no arguments in support of this exception. Thus, the college has not demonstrated any of the submitted information is excepted from disclosure under section 552.111. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

Initially, we note a portion of the submitted information is not responsive to the present 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 this information, which we have marked, in response to this request.

Next, you contend the responsive calendar entries of the college trustees do not constitute public information under section 552.002 of the Government Code.<sup>3</sup> Section 552.021 of the Government Code provides for public access to “public information.” See Gov’t Code § 552.021. Section 552.002(a) defines “public information” as:

[I]nformation 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.

*Id.* § 552.002(a). Section 552.001 states it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. See Gov’t Code § 552.001(a). In Open Records Decision No. 635, the issue presented was whether the Railroad Commissioner’s and a commission employee’s calendars were public records subject to the Act. Open Records Decision No. 635 (1995). Open Records Decision No. 635 explained that information which relates to the official business of a governmental body does not fall outside the scope of the Act merely because one individual, rather than the governmental body as a whole possesses the information. *Id.* This office concluded the commissioner’s calendar was subject to the Act because of the presence of commission related entries in the calendar and state resources were used to maintain the calendar. *Id.* at 7. We also concluded the commission employee’s calendar was not subject to the Act because she purchased the calendar and maintained it herself. *Id.* You state the calendars at issue are not maintained by the college and are maintained individually by the trustees for “any number of other reasons than the transaction of [college] business.” As in Open Records Decision No. 635, while the college states it does not maintain the calendars, the trustees do maintain the calendars. In comments submitted to this office, the requestor states the trustees are entitled to reimbursement from the college for reasonable expenses. Thus, public funding may have been used to purchase the calendars at issue. Pursuant to section 552.303 of the Government Code, we notified the college by letter that we needed additional information explaining whether the trustees purchased the calendars at issue with their own funds and without reimbursement from the college. See *id.* § 552.303(c) (attorney general may give written notice to governmental body that additional information is

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<sup>3</sup>We note the requestor specifically excluded personal calendar entries from his request.

necessary to render a decision). The notice further stated the failure to submit the requisite information within seven calendar days would result in the legal presumption the information at issue is public. *See id.* § 552.303(e). As of the date of this ruling, we have not received the additional information requested. Upon review of the responsive calendar entries, we find they are related to college business. Therefore, we conclude the responsive calendar entries are public information that are subject to the Act. Accordingly, we will address your remaining arguments against disclosure of the calendars entries at issue.

Next, we address your claim under section 552.109 of the Government Code for the calendar entries at issue. Section 552.109 excepts from public disclosure “[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy[.]” *Id.* § 552.109. This office has held the test to be applied to information under section 552.109 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code.

In *Industrial Foundation*, the Texas Supreme Court held that information is protected by common-law privacy if it: (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person; and (2) is not of legitimate concern to the public. *Id.* at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Having reviewed your arguments and the information at issue, we find you have failed to demonstrate that release of this information would constitute an invasion of privacy. Therefore, none of the information at issue may be withheld under section 552.109 of the Government Code.

Next, you claim portions of the calendars at issue are subject to section 552.117. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, 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). The information at issue does not contain the home address, telephone number, social security number, or family member information of an official or employee of a governmental body. Thus, no portion of the information at issue may be withheld under section 552.117(a)(1). As no other arguments against disclosure of the trustees’ calendars have been raised, they must be released.

Now we will turn to your arguments for the remaining information. We note the remaining information is subject to section 552.022(a)(16) of the Government Code. This section provides in part:

(a) 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[.]

Gov't Code. § 552.022(a)(16). In this instance, the remaining information consists attorney fee bills. Thus, the college must release this information pursuant to section 552.022(a)(16) unless it is expressly confidential under other law. Section 552.107 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision No. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). As such, section 552.107 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the college may not withhold the submitted fee bills under section 552.107 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider your argument under rule 503 of the Texas Rules of Evidence for the submitted fee bills

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 represent portions of the submitted fee bills consist of confidential communications between the college’s outside legal counsel and the college made for the purpose of facilitating the rendition of professional legal services to the college. You also state this information was not intended to be disclosed to third parties. Based on your representations and our review, we find the information we have marked constitutes privileged attorney-client communications that may be withheld under rule 503. Some of the remaining information at issue, however, does not consist of or reveal confidential attorney-client communications. Thus, you have failed to demonstrate any of the remaining information at issue documents privileged attorney-client communications. Accordingly, none of the remaining information at issue may be withheld under Texas Rule of Evidence 503.

In summary, the college may withhold the information we have marked under rule 503 of the Texas Rules of Evidence. The remaining 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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jh

Ref: ID# 324231

Enc. Submitted documents

c: Mr. Bob Mhoon  
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(w/o enclosures)