



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2008

Ms. Marianna M. McGowan
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OR2008-16936

Dear Ms. McGowan:

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# 329808.

The Lovejoy Independent School District (the "district"), which you represent, received a request for a copy of a specified invoice for legal services provided to the district and information pertaining to the specific services performed with respect to the invoice. You state that some of the requested information has been released to the requestor. You claim that the submitted information is excepted from disclosure under section 552.107 of the Government Code.¹ You state that you have notified two third parties of the district's receipt of the request for information and of their opportunity to submit comments to this office. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See id.*

Initially, we note that one page of the submitted information, which we have marked, is not responsive to the instant request because it does not constitute an invoice nor does it provide any information pertaining to the services performed with respect to the requested invoice. This ruling does not address the public availability of information that is not responsive to the request, and the district need not release such information in response to this request.

¹Although you raise section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you have withdrawn this exception. *See* Gov't Code §§ 552.301, .302. We also note that 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).

Next, we note, and you acknowledge, that the remaining submitted information consists of an attorney fee bill that is subject to section 552.022 of the Government Code. Section 552.022(a)(16) 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. *Id.* § 552.022(a)(16). You assert that portions of the submitted fee bill are excepted under section 552.107 of the Government Code. Section 552.107 is a discretionary exception to disclosure that protects the governmental body’s interests and may be waived. *See* Open Records Decision No. 676 at 6 (2002) (section 552.107 is not other law for purposes of section 552.022); *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 district may not withhold the information at issue under this exception. However, the Texas Supreme Court has held that the “Texas Rules of Evidence is ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Therefore, we will address your assertion of the attorney-client privilege under rule 503.

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 state that portions of the submitted fee bill constitute communications between attorneys for the district and district representatives. You further state that the communications were made for the purpose of facilitating the rendition of professional legal services to the district's superintendent and that they were not intended to be disclosed to third parties. You state that these legal services were directed by and paid for by the district's board of trustees. You state that these communications have remained confidential. Thus, you contend that portions of the submitted fee bill are privileged under rule 503. Based on your representations and our review of the information at issue, we have marked the information that the district may withhold under rule 503. We conclude that you have not demonstrated that any of the remaining information falls within the scope of the attorney-client privilege; therefore, the district may not withhold any of the remaining information in the submitted fee bill based on the attorney-client privilege. As you raise no other exceptions against the disclosure of the remaining information, it must be released to the requestor.

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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 329808

Enc: Submitted documents

cc: Requestor
(w/o enclosures)