



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2008

Ms. Susan K. Bohn
General Counsel
Lake Travis Independent School District
3322 Ranch Road 620 South
Austin, Texas 78738

OR2008-17398

Dear Ms. Bohn:

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# 330756 (your ID#s 100108-CA4/DL 3424, 100108-CAB/DL 3431, and 100108-CAC/DL 3432).

The Lake Travis Independent School District (the "district") received four requests from the same requestor for several categories of information, including information pertaining to legal expenses incurred by the district during the month of September, 2008, information pertaining to district-owned equipment "containing CFC or HCFC materials," information pertaining to district-owned air conditioning units, and specified district cellular telephone billing statements from August, 2008. You state that some information is being made available to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.105, 552.107, 552.117, and 552.136 of the Government Code and privileged under Texas Rule of Evidence 503.¹ We have considered your arguments and reviewed the submitted information.

We first note that Tab 2 constitutes attorney's fee bills subject to section 552.022(a)(16) of the Government Code. Section 552.022(a)(16) provides for required public disclosure of "information that is in a bill for attorney's fees and that is not privileged under the

¹Although you did not timely request a decision regarding the requested cellular telephone bills, you only raise sections 552.117 and 552.136 for portions of these bills. Because sections 552.117 and 552.136 of the Government Code constitute compelling reasons to withhold information, we will address your arguments under these exceptions. See Gov't Code §§ 552.301, .302.

attorney-client privilege,” unless the information is expressly confidential under other law. Gov’t Code § 552.022(a)(16). You assert that the information contained in the submitted fee bills is protected by sections 552.105 and 552.107 of the Government Code. Sections 552.105 and 552.107 are discretionary exceptions under the Act and do 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), 564 (1990) (statutory predecessor to section 552.105 subject to waiver). Accordingly, the district may not withhold information from the submitted fee bills under section 552.105 or section 552.107. However, the Texas Supreme Court has held that “the 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 information within Tab 2.

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 state that the submitted attorney fee bills contain confidential communications between identified district attorneys and district employees that were made in furtherance of the rendition of professional legal services to the district. You state that these communications have remained confidential and have not been revealed to any third party. Based on your representations and our review of the submitted information, we agree that some of the information you have marked within Tab 2 reveals confidential communications between privileged parties. However, the remaining information you have marked does not constitute or reveal communications between privileged parties. Accordingly, we have marked the information within Tab 2 that is protected by the attorney-client privilege and may therefore be withheld pursuant to Rule 503 of the Texas Rules of Evidence.

We now turn to your arguments regarding the information not subject to section 552.022. You assert that Tab 4 contains attorney-client communications that are excepted from disclosure under section 552.107. When asserting the attorney-client privilege under section 552.107, 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. *See* ORD 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 the attorney notes within Tab 4 document communications between district attorneys and district officials, all of whom you have identified. You state that these communications were made in furtherance of the rendition of legal services to the district, and you inform this office that these communications have remained confidential. Based on your representations and our review, we agree that the notes within Tab 4 reveal privileged attorney-client communications. Accordingly, the district may withhold these notes under section 552.107 of the Government Code.

You assert that the telephone numbers you have marked within Tab 5 are subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and 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. Gov't Code § 552.117. Additionally, section 552.117 also encompasses personal cellular telephone numbers, provided that the cellular phone service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117(a)(1) exception to personal cellular phone number and personal pager number of employee who elects to withhold home phone number in accordance with section 552.024). Whether a

particular piece of information is protected by section 552.117 must be determined at the time the request for it is received. *See* Open Records Decision No. 530 at 5 (1989). You state that the home and personal cellular telephone numbers you have marked within Tab 5 pertain to district employees who timely requested this information be made confidential pursuant to section 552.024. You indicate that the personal cellular numbers you have marked pertain to telephone service paid for by the employees at issue with their own funds. Based upon your representations, we agree that the information you marked within Tab 5 must be withheld under section 552.117(a)(1).

You claim that portions of Tab 5 are subject to section 552.136, which provides:

(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. Upon review, we agree that the cellular telephone account numbers you have marked within Tab 5 must be withheld pursuant to section 552.136 of the Government Code.

In summary, the district may withhold the information we have marked within Tab 2 under Texas Rule of Evidence 503. The district may withhold Tab 4 under section 552.107 of the Government Code. The district must withhold the information it has marked within Tab 5 under sections 552.117 and 552.136 of the Government Code. 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 330756

Enc. Submitted documents

c: Requestor
(w/o enclosures)