



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 16, 2009

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

OR2009-03399

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# 338142 (Lake Travis Request Nos. 010509-R139/DL 3591, 010509-R142/DL 3594).

The Lake Travis Independent School District (the "district") received two requests from the same requestor for "billing statements, invoices and receipts for any and all legal expenses of Lake Travis ISD received and/or paid" during December 2008, and "billing statements, invoices and payments regarding any paid [district] cell phones" during the same time period. You state that the district has made redacted copies of some of the documents available to the requestor for review. You claim that a portion of the remaining information is excepted from disclosure under sections 552.107 and 552.136 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered the exceptions you claim and reviewed the submitted information.

The information in Tab 1 consists of attorney fee bills that are subject to section 552.022 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 attorney-client privilege," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(16). Although you seek to withhold the information at issue under section 552.107 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; 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 (discretionary exceptions generally). As such, section 552.107 is not other law that makes information confidential for the purposes of section 552.022(a)(16), and the district may not withhold any of the information at issue under that exception. 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). Accordingly, we will address your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence.

Rule 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). *See 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 document confidential communications between the district's attorneys and the district that were made in connection with the rendition of professional legal services to the district. You have identified the parties to the communications. Based on your representations and our review of the information at issue, we agree that the district may withhold the information we have marked on the basis of the attorney-client privilege under rule 503. As you have not demonstrated how any of the remaining information in the attorney fee bills constitute confidential communications between privileged parties made for the purpose of facilitating the rendition of professional legal services, the rest of the submitted attorney fee bills are not privileged, and may not be withheld pursuant to rule 503.

Section 552.136 of the Government Code provides that "[n]otwithstanding 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(b); *see also* § 552.136(a) (definition of "access device number" includes account numbers). The district must withhold the account and routing numbers you have marked, plus the additional item we have marked, in Tab 3 pursuant to section 552.136 of the Government Code.

In summary, the district may withhold the information we have marked in the attorney fee bills in Tab 1 on the basis of the attorney-client privilege under rule 503 of the Texas Rules of Evidence. The district must withhold the marked account numbers in Tab 3 under section 552.136 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/eb

Ref: ID# 338142

Enc. Submitted documents

c: Requestor
(w/o enclosures)