ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2009

Mr. Miguel A Saldaña
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103 East Price Road, Suite A
Brownsville, Texas 78521

Mr. Robert Viña III
Walsh, Anderson, Brown, Aldridge & Gallegos P.C.
6521 North 10th Street, Suite C
McAllen, Texas 78504

OR2009-04102

Dear Mr Saldaña and Mr Viña:

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# 339060 (BISD Request #4658).

The Brownsville Independent School District (the "district"), which you represent, received a request for a copy of the investigation regarding a specified complaint. You claim that the information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that section 552.022 of the Government Code is applicable to the submitted information. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). In this instance, the submitted information constitutes a completed report and is thus subject to section 552.022(a)(1). Although you seek to withhold the submitted information under sections 552.103, 552.107, and 552.111 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News,* 4 S.W.3d 439, 475-76 (Tex. App.—Dallas, 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 676 at 6 (2002) (stating that where section 552.022 is applicable to the

information at issue the governmental body should raise Texas Rule of Evidence 503 not section 552.107 of the Government Code); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally); Open Records Decision No 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). As such, sections 552.103, 552.107, and 552.111 are not other law that makes information confidential for the purposes of section 552.022. Accordingly, the district may not withhold any of the submitted information under these sections. However, the attorney-client privilege found in Texas Rule of Evidence 503 can serve as other law for the purposes of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001) (addressing applicability of Texas Rule of Evidence 503 to information encompassed by section 552.022 of the Government Code); Open Records Decision No. 676 (2002). Therefore, we will address your argument against disclosure under Texas Rule of Evidence 503 for the submitted information. Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will also consider your arguments under section 552.101.

You contend that the submitted information is protected by the attorney-client privilege. Rule 503 of the Texas Rules of Evidence 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

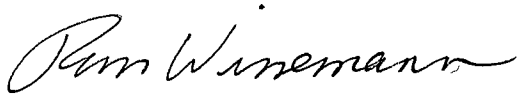
document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was 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). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You state the submitted information consists of a communication between the district and the district's outside counsel made in furtherance of the rendition of legal services. You further state that this communication was made in confidence, and that the confidentiality of the information at issue has been maintained. Based on your representations and our review, we conclude that the submitted information may be withheld in its entirety under rule 503 of the Texas Rules of Evidence. *See Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (attorney's entire investigative report was protected by attorney-client privilege where attorney was retained to conduct investigation in her capacity as attorney for purpose of providing legal services and advice).[1]

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/rl

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[1]As our ruling is dispositive, we need not address your other arguments against disclosure.

Ref: ID# 339060

Enc. Submitted documents

cc: Requestor
(w/o enclosures)