



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2009

Mr. Juan J. Cruz
Escamilla & Poneck, Inc.
Attorneys for Crystal City Independent School District
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2009-07502

Dear Mr. Cruz:

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# 344826.

The Crystal City Independent School District (the "district"), which you represent, received a request for information pertaining to a named individual and a specified complaint. You state that you will release some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note us that the information we have marked is not responsive to the instant request because it does not relate to the named individual or specified complaint. 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 that information in response to the request.

Next, we note that the responsive information is subject to section 552.022 of the Government Code. Section 552.022 provides that:

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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108.

Gov't Code § 552.022(a)(1). In this instance, you indicate that the submitted information consists of a completed investigation made for the district. The district must release the completed investigation under section 552.022(a)(1) of the Government Code unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly confidential under other law. Section 552.107 of the Government Code is a discretionary exception that protects a governmental body's interests and may be waived. As such, it is not other law that makes information confidential for purposes of section 552.022. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 676 at 10-11 (2002) (attorney-client privilege under section 552.107 may be waived). Therefore, the responsive information may not be withheld on the basis of section 552.107. However, the attorney-client privilege, which you raise for the responsive information, is also found in Rule 503 of the Texas Rules of Evidence. The Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and 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 (Tex. 2001); *see also* ORD 676. Accordingly, we will consider your assertion of this privilege under Rule 503 with respect to the responsive information. In addition, because section 552.101 of the Government Code constitutes other law for the purposes of section 552.022, we will consider your argument under section 552.101.

Texas Rule of Evidence 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. 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 explain that the responsive information consists of an investigation report and the investigative file pertaining to allegations of misconduct by a district employee. You indicate that the submitted information was gathered and created by an outside attorney hired by the district for the purpose of providing legal advice to the district. You explain that this information was communicated by the outside attorney to the district’s administration, board of trustees, and general counsel. You also state that this information was intended to be and has remained confidential. Based on your representations and our review of the information at issue, we agree that this information is protected by the attorney-client privilege. *See Harlandale Independent School District*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (concluding that 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). Therefore, the district may withhold the responsive information under Rule 503 of the Texas Rules of Evidence. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,

A handwritten signature in cursive script, appearing to read "Laura E. Ream".

Laura E. Ream
Assistant Attorney General
Open Records Division

LER/dls

Ref: ID# 344826

Enc. Submitted documents

c: Requestor
(w/o enclosures)