



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2009

Ms. Janet Sobey Bubert
Brackett & Ellis
100 Main Street
Fort Worth, Texas 76102-3090

OR2009-13150

Dear Ms. Bubert:

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# 355601.

The Manara Academy (the "academy"), which you represent, received a request for legal and professional invoices, the academy's Texas Education Agency ("TEA") application or letter for change of charter location, amendments to the academy's original TEA application, and public notices as required by the TEA application process. You state you are providing some of the requested documents to the requestor. You claim that the submitted information is excepted from disclosure under section 552.107 of the Government Code, and privileged under rule 503 of the Texas Rules of Evidence.¹ We have considered your arguments and reviewed the submitted information.

¹You also raise sections 552.022 and 552.101 of the Government Code as exceptions against disclosure. We note that section 552.022 acts to make certain information public, and is not an exception against disclosure. We also note that section 552.101, which you raise in conjunction with rule 503, does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

We note, and you acknowledge, that the submitted information consists of 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 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 section 552.107 of the Government Code. Section 552.107 is a discretionary exception under the Act and does 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). Accordingly, the academy may not withhold information from the submitted fee bills under 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 submitted information.

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 information you have marked consists of communications between attorneys representing the academy and academy staff. You further state that the communications were made for the purpose of the rendition of professional legal services to the academy. In addition, you indicate the communications were made in confidence and that confidentiality has been maintained. We note, however, that you have failed to specifically identify any of the privileged parties. *See* Open Records Decision No. 676 at 8 (governmental body must inform this office of identities and capacities of individuals to whom each communication at issue has been made; this office cannot necessarily assume that communication was made only among categories of individuals identified in rule 503). From our review of the information at issue, we are able to identify some of the individuals as academy staff or as attorneys representing the academy. Accordingly, based on your representations and our review, we determine that the academy may withhold the information we have marked on the basis of the attorney-client privilege under Texas Rule of Evidence 503. However, we are unable to identify the remaining individual recipients of the marked communications or have identified them as non-privileged parties. We also note that some of remaining information you have marked under rule 503 does not document a communication. Accordingly, you have failed to establish that the remaining information you have marked documents confidential communications that were made between privileged parties. Therefore, we conclude that Texas Rule of Evidence 503 is not applicable to the remaining information you have marked. As you raise no further exceptions, the remaining information must be released to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal line extending to the right from the end of the signature.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 355601

Enc. Submitted documents

c: Requestor
(w/o enclosures)