



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2009

Ms. Chris G. Elizalde
Ms. Christine Badillo
Attorney for Leander Independent School District
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
P.O. Box 2156
Austin, TX 78768

OR2009-18144

Dear Ms. Elizalde and Ms. Badillo:

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# 365715.

The Leander Independent School District (the "district"), which you represent, received a request for information pertaining to a specified consulting group. You claim that the submitted information is excepted from disclosure under sections 552.107, 552.111, and 552.116 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your assertion that the request for information has been withdrawn by operation of law. You inform us that the district sent the requestor an estimate of the cost of providing the requested information. See Gov't Code §§ 552.2615(a), 552.263(f). You further inform us that you have not received a response to the cost estimate. *See id.* § 552.2615(a)(2) (request automatically withdrawn if requestor does not respond to itemized

¹Although you also claim the attorney-client privilege under section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 1-2 (1990)*. Thus, we will not address your claim that the submitted information is confidential under section 552.101 in conjunction with rule 503.

estimate of charges). However, we have examined the cost estimate and determine that it does not comply with the provisions of section 552.2615 of the Act because it does not inform the requestor that inspection of the records would be a less costly method of obtaining the information. *See id.* § 552.2615(a). Accordingly, we conclude the requestor's public information request has not been withdrawn by operation of law, and we will address your arguments against disclosure of the submitted information.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, 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. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was "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). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You claim that the information in Exhibit 2 consists of communications that were made for the purpose of facilitating the rendition of professional legal services to the district. You state that the communications at issue were intended to be and have remained confidential. You have identified the parties to the communications as district employees, district consultants, and attorneys representing the district. Upon review, we find that the district may withhold the information in Exhibit 2 under section 552.107(1) of the Government Code.

Section 552.116 of the Government Code provides:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure under the Act]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [required public disclosure] by this section.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You inform us that the district's board of trustees has delegated to the school superintendent authority to procure the services of consultants to conduct an audit of the district's special education department. You state the information in Exhibits 3 and 4 consists of audit working papers of an audit conducted by the district and a consulting group. Based on your representations and our review, we agree the information in Exhibits 3 and 4 consists of audit working papers as defined in section 552.116(b)(2). Accordingly, the district may withhold this information pursuant to section 552.116 of the Government Code.

In summary, the district may withhold the information in Exhibit 2 under section 552.107(1) of the Government Code and the information in Exhibits 3 and 4 under section 552.116 of

the Government Code. 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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/rl

Ref: ID# 365715

Enc. Submitted documents

c: Requestor
(w/o enclosures)