



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 9, 2010

Ms. Ann Greenberg  
Walsh, Anderson, Brown, Aldridge, & Gallegos, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2010-03373

Dear Ms. Greenberg:

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# 373520.

The Bridge City Independent School District (the "district"), which you represent, received a request for all records pertaining to the display of symbols on any form of district property, all records pertaining to the requestor's communications to the district and its individual employees and representatives about the potential placement of a symbol of the Order of Freemasons on a proposed elementary school, and final construction plans and specifications for the new elementary school. You state you have released a portion of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under Texas Rule of Evidence 503.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

The submitted information consists of attorney fee bills. As you acknowledge, attorney fee bills are subject to section 552.022(a)(16) of the Government Code, which provides that information in a bill for attorney's fees must be released unless it is privileged under the attorney-client privilege or is expressly confidential under other law. *See Gov't Code*

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with Rule 503 of the Texas Rules of Evidence, 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 2 (1990)*. Thus, we will not address your claim that the submitted information is confidential under section 552.101 in conjunction with this rule.

§ 552.022(a)(16). Although you assert that information contained in the submitted fee bills is excepted from disclosure by section 552.107 of the Government Code, this section 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 district may not withhold information contained in the submitted fee bills under section 552.107. However, you also assert that the submitted attorney fee bills are privileged under the attorney-client privilege found in rule 503 of the Texas Rules of Evidence. 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). Therefore, we will determine whether the district may withhold any of the information in the attorney fee bills under Texas Rule of Evidence 503.

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

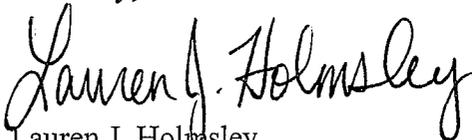
communication; (2) identify the parties involved in the communication; and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a 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 submitted attorney fee bills contain confidential communications between the district's outside attorneys and district employees. You state that these communications were made for the purpose of facilitating the rendition of professional legal services to the district. Further, you state that the submitted fee bills were intended to be, and have remained, confidential. Based on your representations and our review, we agree that the attorney fee bills contain information that reveals confidential communications between privileged parties. Accordingly, we have marked the information that is protected by the attorney-client privilege and may therefore be withheld pursuant to rule 503 of the Texas Rules of Evidence. However, you have failed to demonstrate that any of the remaining information documents privileged attorney-client communications. Accordingly, none of the remaining information may be withheld under Texas Rule of Evidence 503. As you raise no further exceptions to disclosure, we find 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](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,



Lauren J. Holmsley  
Assistant Attorney General  
Open Records Division

LJH/jb

Ref: ID# 373520

Enc. Submitted documents

c: Requestor  
(w/o enclosures)