



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2010

Ms. Tricia McKinney
Public Information Specialist
Katy Independent School District
P.O. Box 159
Katy, Texas 77492-0159

OR2010-05699

Dear Ms. McKinney:

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# 377488 (Katy ISD No. 0910194-40).

The Katy Independent School District (the "district") received a request for certain attorney fee bills submitted to the district as of a specified date. You claim the submitted information is privileged under rule 503 of the Texas Rules of Evidence in conjunction with section 552.101 of the Government Code. We have considered your argument and reviewed the submitted information.

We note that you have failed to fully comply with section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(a), (b). You state the district received the present request for information on February 4, 2010. Therefore, you were required to submit your request for a decision, stating the exceptions that apply, by February 19, 2010. Although you timely submitted your initial request for a decision to this office, you only raised section 552.101 of the Government Code as an exception to disclosure of the submitted information. You did not raise Texas Rule of Evidence 503 until February 26, 2010. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section does not encompass Texas Rule of Evidence 503 because it is not constitutional law, statutory law, or a judicial decision. Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Thus, your claim under rule 503 is not made timely by your original claim under section 552.101 of the

Government Code. Consequently, we find the district has failed to comply with the ten business day deadline mandated by section 552.301(b) with respect to your claim under Texas Rule of Evidence 503.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. See Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); see also Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. See Open Records Decision No. 150 at 2 (1977). We note the attorney-client privilege under Texas Rule of Evidence 503 is discretionary and may be waived. See Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege), 522 at 4 (1989) (discretionary exceptions in general). Accordingly, we conclude the district has waived its claim under Texas Rule of Evidence 503. See ORD 676 at 12 (claim of attorney-client privilege under section 552.107 or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights). As you make no further arguments against disclosure, the submitted 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, 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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/tl

Ref: ID# 377488

Enc. Submitted documents

c: Requestor
(w/o enclosures)