



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 7, 2010

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

OR2010-08201

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# 382207 (PIR 0910361-40).

The Katy Independent School District (the "district") received a request for all billing statements/invoices to the district from law firms or contractors pertaining to work performed or charges incurred on or after August 31, 2009 to the date of the request in relation to a specified hearing request and any court litigation related to this hearing request.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that the submitted information in Exhibit B consists of attorney fee bills which are 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

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<sup>1</sup>We note that the district was closed for business on March 15, 2010 through March 19, 2010 and April 2, 2010.

the information is expressly confidential under "other law." Gov't Code § 552.022(a)(16). Although you seek to withhold the submitted information under sections 552.103 and 552.107 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); 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). As such, sections 552.103 and 552.107 are not other laws that make information confidential for the purposes of section 552.022(a)(16), and the district may not withhold the submitted information in Exhibit B under these exceptions. The Texas Supreme Court has held, however, 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). Accordingly, we will address your attorney-client privilege claim under rule 503 of the Texas Rules of Evidence for the submitted fee bills.

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 [14<sup>th</sup> Dist.] 1993, no writ).

You state that the submitted attorney fee bills contain confidential communications, which you have highlighted, between the district's attorneys and the district detailing legal services provided to the district. You state that these communications were made for the purpose of facilitating the rendition of professional legal services to the city. Further, you state the submitted fee bills were intended to be, and have remained, confidential. Based on your representations and our review, we agree that the submitted 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. We note, however, that you have failed to identify some of the parties to the communications in the submitted attorney fee bills. *See* ORD 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); *see generally* Open Records Decision No. 150 (1977) (predecessor to Act places burden on governmental body to establish why and how exception applies to requested information); *Strong v. State*, 773 S.W. 2d 543, 552 (Tex. Crim. App. 1989) (burden of establishing attorney-client privilege is on party asserting it). We further note that some of the remaining information does not document communications. Thus, you have failed to demonstrate that the remaining information you have highlighted 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, 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,

A handwritten signature in cursive script, appearing to read "Andrea Caldwell".

Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 382207

Enc. Submitted documents

c: Requestor  
(w/o enclosures)