



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 15, 2010

Ms. Leticia McGowan  
School Attorney  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204

OR2010-10547

Dear Ms. McGowan:

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# 386700.

The Dallas Independent School District (the "district") received a request for: 1) documents, reports, or correspondence regarding the search for replacement sites for the O.M. Roberts building; 2) correspondence between the district and Ramirez and Associates pertaining to the purchase of properties in the Jubilee Park neighborhood for the O.M. Roberts replacement site; 3) a list of all properties the district has acquired for the replacement site, as well as a separate list of properties the district is in the process of acquiring; 4) records, invoices, or contracts from any major repairs, updates, renovations, or improvements that the current school building has undergone since January 2005; 5) invoices for the work done under the "2002 Bond Program Annual Report to the Superintendent;" and 6) reports, records, or documents that mention any estimates or studies that the district has conducted itself or has contracted out on the structural issues district spokesperson Jon Dahlender has said O.M. Roberts is facing. You state the district is making information responsive to items 4, 5, and 6 available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.105 and 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(16). The submitted information contains attorney fee bills which fall within the purview of section 552.022. The district may only withhold this information if it is confidential under "other law." You claim this information is excepted from disclosure under sections 552.105 and 552.107 of the Government Code. However, sections 552.105 and 552.107 are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 564 (1990) (statutory predecessor to section 552.105 subject to waiver), 522 (1989) (discretionary exceptions in general). As such, sections 552.105 and 552.107 are not other law that makes information confidential for the purposes of section 552.022. Therefore, the district may not withhold the fee bills under section 552.105 or section 552.107 of the Government Code. However, the attorney-client privilege is also found in rule 503 of the Texas Rules of Evidence. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will consider your assertion of this privilege under rule 503 for the submitted fee bills. Furthermore, we note some of the information subject to section 552.022 is subject to section 552.136 of the Government Code.<sup>1</sup> Because this section is "other law" for purposes of section 552.022, we will also consider its applicability to the fee bills, as well as your arguments against disclosure of the remaining information not subject to section 552.022.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 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 the communication is confidential by explaining it was not intended to be disclosed to third persons and 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 indicate the fee bills contain attorney-client privileged communications. You state the communications were made for the purpose of facilitating the rendition of professional legal services to the district. You also state these communications were intended to be confidential and that their confidentiality has been maintained. You identified some of the parties to the communications and we are able to ascertain the identities of the other parties to the communications. Based on your representations and our review, we conclude the information we marked in the fee bills may be withheld under Texas Rule of Evidence 503. You have not explained, nor can we discern, how the remaining information in the fee bills is protected under the attorney-client privilege. Therefore, this information may not be withheld under rule 503.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Therefore, the district must withhold the partial credit card number, customer account numbers, bank account numbers, and bank routing numbers we marked under section 552.136.<sup>2</sup> The remaining information in the fee bills must be released.

You raise section 552.105 of the Government Code for the remaining information not subject to section 552.022. Section 552.105 excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

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<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a bank account number and bank routing number under section 552.136, without the necessity of requesting an attorney general decision.

*Id.* § 552.105. Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. *See* Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted from disclosure so long as the transaction relating to that information is not complete. *See* ORD 310. But, the protection offered by section 552.105 is not limited solely to transactions not yet finalized. This office has concluded that information about specific parcels of land obtained in advance of other parcels to be acquired for the same project could be withheld where release of the information would harm the governmental body's negotiating position with respect to the remaining parcels. *See* ORD 564 at 2. A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" ORD 357 at 3 (quoting Open Records Decision No. 222 (1979)). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiating position with regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body's good-faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See* ORD 564.

You indicate the remaining information pertains to the district's acquisition of identified properties for a school replacement site. You state a final agreement on the purchase of these properties has not been reached or approved by the district at this time. You state negotiations with the property owners are ongoing and the release of the remaining information would harm the district's negotiating position with respect to the properties' acquisition. Based on your representations and our review of the information at issue, we conclude the district may withhold the remaining information not subject to section 552.022 under section 552.105 of the Government Code.<sup>3</sup>

In summary, the district may withhold the information we marked in the fee bills under rule 503 of the Texas Rules of Evidence. The district must withhold the information we marked in the fee bills under section 552.136 of the Government Code. The remaining information in the fee bills must be released. The district may withhold the remaining information not subject to section 552.022 under section 552.105 of the Government Code.

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

Ms. Leticia McGowan - Page 6

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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/em

Ref: ID# 386700

Enc. Submitted documents

c: Requestor  
(w/o enclosures)