



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 21, 2010

Ms. Susan K. Bohn  
General Counsel  
Lake Travis Independent School District  
3322 Ranch Road 620 South  
Austin, Texas 78738

OR2010-10849

Dear Ms. Bohn:

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# 387445 (DL 4194 and DL 4197).

The Lake Travis Independent School District (the "district") received two requests from the same requestor for all billing statements, invoices, receipts, and payments for all legal expenses of the district and any mobile communications devices/services paid for during the month of April 2010. You state you will make some of the responsive documents available to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.107 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains 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 the information is expressly confidential under "other law." Gov't Code § 552.022(a)(16). Although you seek to withhold the submitted information under section 552.107 of the Government Code, this section is a discretionary exception to disclosure that protects a 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), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.107 is not other law that makes

information confidential for the purposes of section 552.022(a)(16), and the district may not withhold the submitted attorney fee bills under this exception. 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 [14th Dist.] 1993, no writ).

You state that the submitted attorney fee bills contain confidential communications, which you have marked, between the district and the district's legal counsel. You state that these communications provide "professional legal advice pertaining to potential claims, liability, and violation of law presented in assorted circumstances, and legal recommendations on how to proceed in various situations that may occur." We understand 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 marked documents privileged attorney-client communications. Accordingly, none of the remaining information you have marked may be withheld under Texas Rule of Evidence 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). An access device number is one that may be used to (1) obtain money, goods, services; or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *See id.* § 552.136(a) (defining "access device"). Accordingly, the district must withhold the bank account number, bank routing number, and cellular telephone account number you have marked, as well as the cellular telephone account number we have marked, under section 552.136 of the Government Code.<sup>1</sup>

In summary, the district may withhold the information we have marked under rule 503 of the Texas Rules of Evidence. The district must withhold the marked account numbers under section 552.136 of the Government Code. The remaining information must be released.

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<sup>1</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 bank account numbers and bank account routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 387445

Enc. Submitted documents

c: Requestor  
(w/o enclosures)