



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2010

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

OR2010-15029

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# 395513 (LTISD Nos. 070110-D74/DL 4257 and 070110-D7E/DL 4267).

The Lake Travis Independent School District (the "district") received two requests from the same requestor for all billing statements, invoices, and receipts for district legal expenses received or paid in June 2010 and for all expenses for specified accounting budget codes from 2005 through 2010. You state you will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 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 Tab 1 contains an attorney fee bill 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 Tab 1 under section 552.107 of the Government Code, that 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 any of the information in Tab 1 under that 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 Tab 1.

Texas Rule of Evidence 503 encompasses the attorney-client privilege. Rule 503(b)(1) provides as follows:

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 claim the submitted fee bill in Tab 1 is confidential in its entirety. However, section 552.022(a)(16) of the Government Code provides that information “that is *in* a bill for attorney’s fees” is not excepted from required disclosure unless it is confidential under “other law” or privileged under the attorney-client privilege. See Gov’t Code § 552.022(a)(16) (emphasis added). This provision, by its express language, does not permit the entirety of an attorney fee bill to be withheld. See Open Records Decision Nos. 676 (attorney fee bill cannot be withheld in entirety on basis it contains or is attorney-client communication pursuant to language in section 552.022(a)(16)), 589 (1991) (information in attorney fee bill excepted only to extent information reveals client confidences or attorney’s legal advice).

Alternatively, you assert the billing entry in the fee bill, which you have marked, is privileged under rule 503. You state the information within the submitted attorney fee bill reveals a confidential communication between district staff and the district’s outside counsel. You also state this communication was made for the purpose of facilitating the rendition of professional legal services to the district. Based on your representations and our review, we conclude the district may withhold the information we have marked under Texas Rule of Evidence 503. However, you have failed to demonstrate the remaining information in Tab 1 reveals a communication between privileged parties. See ORD 676. Thus, the remaining information in Tab 1 is not privileged under rule 503, and the district may not withhold it on that basis.

You seek to withhold the information you have marked in Tab 3 under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). You state the information you have marked in Tab 3 consists of the names of former district employees who purchased insurance under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”). You further state the district does not contribute to COBRA coverage for

former employees. Upon review, we agree the information at issue constitutes personal financial information not relating to a transaction between an individual and a governmental body. Thus, the district must withhold the names you have marked in Tab 3 under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the district may withhold the information we have marked in Tab 1 pursuant to rule 503 of the Texas Rules of Evidence. The district must withhold the names you have marked in Tab 3 under section 552.101 of the Government Code in conjunction with common-law privacy. The district must release the remaining information.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 395513

Enc. Submitted documents

c: Requestor
(w/o enclosures)