



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2010

Mr. Hans P. Graff
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2010-15933

Dear Mr. Graff:

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# 397502.

The Houston Independent School District (the "district") received a request for all invoices paid and/or submitted for payment related to a specified case, the number of internal hours assigned to the case from the district's legal department, dates of actual or pending board discussion about the case, the number of lawsuits settled by the district from 2008 to present, and the current employment titles or dates and types of separations for nine named district employees. 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).

We note you have only submitted invoices for our review. To the extent information responsive to the remaining portions of the request existed when the request was received, we assume it has been released. If the district has not released this information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also id.* § 552.022(a)(2) (name, title, and dates of employment of employees of each employee of a governmental body are public information unless expressly confidential under other law); Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information is subject to section 552.022(a)(16) of the Government Code, which provides in relevant part:

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(a)(16). The submitted information consists of attorney fee bills which must be released pursuant to section 552.022(a)(16) unless they are expressly confidential under "other law." You assert portions of the fee bills are excepted under sections 552.103 and 552.107 of the Government Code. Sections 552.103 and 552.107 are discretionary exceptions to disclosure that protect governmental bodies' interests and therefore 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 No. 676 at 6 (2002) (section 552.107 is not other law for purposes of section 552.022); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, the district may not withhold any portion of the fee bills under section 552.103 or section 552.107. However, the Texas Supreme Court has held 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). Additionally, we note that some of the submitted information may be subject to section 552.136 of the Government Code, which is also considered "other law" for the purposes of section 552.022. We will, therefore, consider your attorney-client privilege claim under rule 503 of the Texas Rules of Evidence and the applicability of section 552.136 of the Government Code for the submitted information.

Rule 503 of the Texas Rules of Evidence enacts 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). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* ORD 676 at 6-7.

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 seek to withhold the information you have marked within the fee bills as privileged attorney-client communications. You assert the information you have marked consists of confidential communications made for the purpose of facilitating the rendition of professional legal services to the district and that the communications have remained confidential. Although you have not identified the parties to the communications, we are able to discern the identities of some privileged parties from the submitted documents. Based on your representations and our review, we conclude the information we have marked may be withheld under rule 503 of the Texas Rules of Evidence. However, the remaining information you marked in the submitted fee bills either reveals a communication with a party who is not identified as privileged or does not reveal a communication. Because you failed to provide this office with the necessary facts to demonstrate the elements of the attorney-client privilege with respect to the remaining information you have marked, this information is not privileged under rule 503, and the district may not withhold it on that basis.

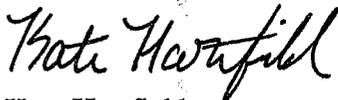
Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”¹ Gov’t Code § 552.136(b). Upon review, we find the bank account and routing numbers we have marked in the remaining information are access device numbers that are excepted from disclosure under section 552.136. Accordingly, the district must withhold the information we have marked under section 552.136 of the Government Code.²

In summary, the district may withhold the information we marked under rule 503 of the Texas Rules of Evidence. The district must withhold the bank account and routing numbers we marked under section 552.136 of the Government Code. 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

¹The 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).

²We 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 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 397502

Enc. Submitted documents

c: Requestor
(w/o enclosures)