



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 8, 2011

Mr. Miles T. Bradshaw  
Counsel for the Royal Independent School District  
Karczewski Bradshaw L.L.P.  
5847 San Felipe, Suite 1900  
Houston, Texas 77057

OR2011-08160

Dear Mr. Bradshaw:

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# 420034.

The Royal Independent School District (the "district"), which you represent, received a request for sixteen categories of information, including information pertaining to a named individual, certain district expenses, minutes from a specified board meeting, basketball tournaments in 2011, legal services provided to the district, certain employment contracts, and certain pay rate schedules. You state that, with the exception of the submitted attorney fee bills, the district has released the requested information. The district redacted student-identifying information from the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.<sup>1</sup> You claim portions of the submitted fee bills are excepted from disclosure under section 552.107 of the

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Government Code and privileged under Texas Rule of Evidence 503.<sup>2</sup> We have considered your arguments and reviewed the submitted information.

We note, and you acknowledge, the information you seek to withhold is subject to section 552.022 of the Government Code. This section provides, in pertinent part:

(a) [T]he 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). In this instance, the information you marked consists of entries in attorney fee bills that are subject to section 552.022(a)(16). Therefore, this information must be released under section 552.022 unless it is confidential under "other law." Although you raise section 552.107 of the Government Code, this 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. Therefore, the district may not withhold the marked fee bill entries under section 552.107 of the Government Code. You also raise rule 503 of the Texas Rules of Evidence, which the Texas Supreme Court has held are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your assertions of the attorney-client privilege under rule 503 of the Texas Rules of Evidence.

Texas Rule of Evidence 503 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;

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<sup>2</sup>Although you raise Texas Rule of Evidence 503 in conjunction with section 552.101 of the Government Code, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

(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 it is 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). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You assert portions of the submitted fee bills document privileged attorney-client communications. You identify the parties to these communications as the district's outside counsel, district employees, and district representatives. You state the communications at issue were made in furtherance of the rendition of legal services to the district. Further, you state matters referenced in the fee bills were intended to be, and have remained, confidential. Based on your representations and our review of the information at issue, we agree the district may withhold most of the information you marked under Texas Rule of Evidence 503. However, you do not explain how the remaining information you marked, which we marked for release, reveals the content of privileged communications. Therefore, because you failed to provide this office with the necessary facts to demonstrate the elements of the attorney-client privilege with respect to the information we marked for release, such information is not privileged under rule 503 and may not be withheld.

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 black ink, appearing to read "Bob Davis", written in a cursive style.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/eb

Ref: ID# 420034

Enc. Submitted documents

c: Requestor  
(w/o enclosures)