ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2011

Ms. LeAnne Lundy
Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2011-10060

Dear Ms. Lundy:

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# 423821.

The Klein Independent School District (the "district"), which you represent, received a request for (1) the total expenditure of public funds for legal services in 2010 and 2011; (2) the total expenditure of public funds to the law firm, Rogers, Morris & Grover, L.L.P. in 2010 and 2011, including invoices; (3) the current number of teaching staff and non-teaching staff in the district; and (4) the total expenditure for teaching staff and non-teaching staff in the district. We note the district has redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.[1] You claim that portions of the submitted information are excepted from disclosure under section 552.107 of the Government Code and privileged under

[1]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.

rule 503 of the Texas Rules of Evidence.[2] We have considered your arguments and reviewed the submitted representative sample of information.[3] We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the district has not submitted any information responsive to items three and four of the request. To the extent information responsive to items three and four existed on the date the district received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* 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).

We note, and you acknowledge, the submitted information consists of attorney fee bills. Section 552.022(a)(16) of the Government Code 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). Thus, the district must release the submitted fee bills pursuant to section 552.022(a)(16) unless they are expressly confidential under other law. Section 552.107 of the Government Code 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 submitted fee bills under section 552.107 of the Government Code. 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). Accordingly, we will consider your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence.

Texas Rule of Evidence 503 enacts the attorney-client privilege and provides in part:

> 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:

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[2]Although you raise section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence, 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).

[3]We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decisions Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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

You assert the marked information in the submitted fee bills consists of privileged attorney-client communications between district personnel and outside counsel for the district made for the purpose of facilitating the rendition of professional legal services to the district. You further assert the communications at issue were not intended to be disclosed to third parties, and confidentiality has been maintained. Based on your representations and our review, we find the district may withhold the information we have marked under rule 503 of the Texas Rules of Evidence. However, you have not shown how the remaining information at issue consists of communications between district personnel and the district's outside counsel. Further, some of the remaining information at issue documents communications with individuals whom you have not identified as clients, client representatives, lawyers, or lawyer representatives. Thus, you have failed to demonstrate that

any of the remaining information at issue documents privileged attorney-client communications. Accordingly, the district may not withhold the remaining information at issue pursuant to rule 503 of the Texas Rules of Evidence. As you do not assert any other arguments against disclosure, the remaining information must be released to the requestor.

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,

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 423821

Enc. Submitted documents

cc: Requestor
(w/o enclosures)