ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2011

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

OR2011-14503

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# 433748 (ORR# 080211-EB6/DL 4584 and # 080211-EC1/DL 4595).

The Lake Travis Independent School District (the "district") received two requests from the same requestor for certain exit interview documents and billing statements for a specified period of time. You state you have made some of the requested information available to the requestor with personal information of an employee redacted pursuant to section 552.117 of the Government Code as permitted by section 552.024 of the Government Code.[1] We note you have also redacted a personal e-mail address under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).[2] You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the

[1]Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2).

[2]Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

Government Code and privileged under Texas Rule of Evidence 503.[3] We have considered your arguments and reviewed the submitted information.

You acknowledge, and we agree, Exhibit C consists of attorney fee bills that are subject to section 552.022 of the Government Code. Section 552.022(a)(16) provides that information in a bill for attorney fees that is not protected under the attorney-client privilege is not excepted from required disclosure unless it is expressly confidential under other law. Therefore, information within these fee bills may only be withheld if it is confidential under other law. Section 552.107 is a discretionary exception to disclosure that protects the governmental body's interests. *See* 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). As such, section 552.107 is not other law that make information confidential for the purposes of section 552.022. Therefore, the district may not withhold the fee bills under this section. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that makes information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your arguments under Texas Rule of Evidence 503 for the information subject to section 552.022(a)(16).

Rule 503(b)(1) provides the following:

> 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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> > (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

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[3]Although you also raise section 552.103, you do not provide arguments explaining its applicability to the information at issue. Therefore, we assume the district is no longer asserting this section. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain applicability of raised exception).

(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).

Accordingly, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must do the following: (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. *See* Open Records Decision No. 676 (2002). Upon a demonstration of all three factors, the entire communication is confidential under rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You claim the submitted attorney fee bills are confidential in their 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 entries in the fee bills, which you have marked, are privileged under rule 503. You state the information within the submitted attorney fee bills reveals confidential communications between district representatives and the district's outside counsel. You have identified the parties involved in these communications. You also state these communications were made for the purpose of facilitating the rendition of professional legal services to the district. Based on your representations and our review of the submitted information, we agree that you have established that portions of the submitted information are privileged under rule 503. However, we find you have failed to establish how any of the remaining information at issue constitutes attorney-client communications

made confidential by rule 503. Accordingly, the district may withhold the information we have marked under rule 503, but may not withhold any of the remaining information at issue on this basis.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy. Common-law privacy protects information that (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 that does not relate 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 that the information you have marked pertains to the decisions of former district employees regarding whether to purchase 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 some of 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 information we have marked under section 552.101 in conjunction with common-law privacy. However, we find the remaining information at issue does not constitute highly intimate or embarrassing information of no legitimate public concern. Thus, none of the remaining information at issue is confidential under common-law privacy, and the district may not withhold it under section 552.101 on that ground.

To conclude, the district may withhold the information we have marked under Texas Rule of Evidence 503. The district must withhold the information we have marked 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 433748

Enc. Submitted documents

c: Requestor
(w/o enclosures)