



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2011

Mr. Andrew B. Thompson
Assistant General Counsel
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110

OR2011-14918

Dear Mr. Thompson:

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# 432832.

The Corpus Christi Independent School District (the "district") received a request for a specified investigative report and all documents contained in the investigation by a named individual regarding a former district employee before his termination. You state the district released the specified investigative report to the requestor. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence, rule 192.5 of the Texas Rules of Civil Procedure, and rule 1.05 of the Texas Disciplinary Rules of Professional Conduct.¹ We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information is part of a completed investigation. Under section 552.022(a)(1) of the Government Code, a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is

¹Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, 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). We also note section 552.101 does not encompass Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct.

excepted under section 552.108 of the Government Code or is expressly confidential under other law. Sections 552.107 and 552.111 are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 6 (section 552.107 is not other law for purposes of section 552.022), 663 at 5 (1999) (governmental body may waive section 552.111); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). As such, they are not other law that makes information confidential for the purposes of section 552.022; therefore, the district may not withhold the submitted information under either of those sections. However, the Texas Supreme Court has held the Texas Rules of Evidence and Texas Rules of Civil Procedure 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). Therefore, we will therefore consider your arguments under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. We note, however, the Texas Disciplinary Rules of Professional Conduct are not considered other law for purposes of section 552.022. Therefore, we do not address your argument under rule 1.05, and thus, none of the information at issue may be withheld on this basis. *See* ORD 676 at 3-4.

Texas Rule of Evidence 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:

(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).

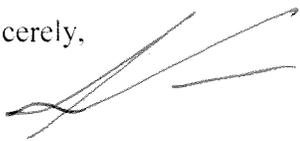
Accordingly, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must do the following: (1) show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved 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* ORD 676. 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).

You state the submitted information constitutes communications between a district representative and the district's attorney that was made in furtherance of the rendition of legal services concerning the alleged misconduct of a district employee. We understand these communications were made in confidence and have remained confidential. Upon review of your arguments and the submitted information, we agree the submitted information constitutes privileged attorney-client communications. Accordingly, the district may withhold the submitted information under rule 503 of the Texas Rules of Evidence. As our ruling is dispositive we do not address your remaining argument.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 432832

Enc. Submitted documents

c: Requestor
(w/o enclosures)