ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2011

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

OR2011-17171

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# 437021 (Nos. 090211-ECC/DL 4606, 090211-ECD/DL 4607, and 090211-ED8/DL 4618).

The Lake Travis Independent School District (the "district") received three requests from the same requestor for (1) records of resignations or terminations of district employees and contractors during August 2011; (2) employee exit interview documents created or submitted during August 2011; and (3) billing statements, invoices, and receipts for legal expenses received or paid during August 2011. You state the district is making some of the requested information available to the requestor, either in its entirety or in redacted form. You also state the district has redacted some of the submitted information pursuant to section 552.024(c) of the Government Code.[1] You claim other submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code and privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the information you submitted.

We first note the district did not fully comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes the procedures a governmental body

[1]Section 552.024(c) 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 to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code §§ 552.024(c)(2), .117(a)(1).

must follow in asking this office to determine whether requested information is excepted from required public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e)(1)(B) requires the governmental body to submit a copy of the request for information to this office no later than the fifteenth business day after the date of its receipt of the request. *See id.* § 552.301(e)(1)(B). You state the district received the instant requests for information on September 2, 2011; therefore, the district's fifteen-business-day deadline under section 552.301(e) was September 26. As of the date of this decision, the district has not submitted a copy of request number 090211-ECC/DL 4606.[2] Thus, any submitted information that is responsive to that request is presumed to be public under section 552.302 of the Government Code. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). To the extent the submitted information is responsive to request number 090211-ECC/DL 4606, which was for records of resignations or terminations of district employees and contractors during August 2011, we understand you to claim some of the information at issue is confidential under section 552.101 of the Government Code. Because a claim under section 552.101 can provide a compelling reason for non-disclosure under section 552.302, we will consider your arguments for all the submitted information you seek to withhold under section 552.101.

We next note the submitted attorney fee bills fall within the scope of section 552.022 of the Government Code. Section 552.022(a)(16) 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 confidential under the Act or other law. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 2 (to be codified as an amendment to Gov't Code § 552.022(a)). Although you seek to withhold the submitted attorney fee bills under section 552.107(1) of the Government Code, that section is a discretionary exception to disclosure and does not make information confidential under the Act. *Id.* §§ 3-26, 28-37 (providing for "confidentiality" of information under specified exceptions); *see* Open Records Decision Nos. 676 at 6 (2002) (Gov't Code § 552.107(1) is not other law for purposes of Gov't Code § 552.022), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold any of the information in the attorney fee bills under section 552.107(1) of the Government Code. The Texas Supreme Court has held, however, that the Texas Rules of Evidence are "other law" that makes information expressly confidential for purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will address your claim under Texas Rule of Evidence 503 for the attorney fee bills.

Rule 503 enacts the attorney-client privilege. Rule 503(b)(1) provides as follows:

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[2]Our description of the request is based on other information you provided in requesting this decision.

> 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;
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> > (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 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 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 contend the attorney-client privilege is applicable to all the information in the submitted attorney fee bills. Alternatively, you seek to withhold marked portions of the fee bills. We note section 552.022(a)(16) provides that information "that is *in* a bill for attorney's fees" is not excepted from disclosure unless the information is confidential under the Act or other law or protected by the attorney-client privilege. *See* Gov't Code § 552.022(a)(16) (emphasis added). Thus, by its express language, section 552.022(a)(16) does not permit an attorney fee bill to be withheld in its entirety. *See also* Open Records Decisions Nos. 676 (attorney fee bill cannot be withheld in its entirety on basis it contains or is attorney-client communication pursuant to language in Gov't Code § 552.022(a)(16)), 589 (1991) (information in attorney fee bill is excepted only to extent it reveals client confidences or

attorney's legal advice). Accordingly, we will determine whether the district may withhold the information you have marked in the fee bills under rule 503. You indicate some of the marked information documents communications between attorneys for and representatives of the district that were made for the purpose of facilitating the rendition of professional legal services to the district. You have identified the parties to those communications. You do not indicate the district has waived the attorney-client privilege with regard to the communications. Based on your representations and our review of the information at issue, we conclude the district may withhold the information we have marked under Texas Rule of Evidence 503. We conclude the remaining information at issue does not document privileged attorney-client communications and may not be withheld under rule 503.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. Common-law privacy protects the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has concluded other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have determined financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

We note information relating to public employees and public employment is generally not protected by common-law privacy because the public has a legitimate interest in such information. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 473 at 3 (1987) (fact that public employee received less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 5 (1986) (public has legitimate

interest in knowing reasons for public employee's dismissal, demotion, or promotion), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private).

You have marked medical and insurance information the district seeks to withhold on privacy grounds. Having reviewed the information at issue, we conclude the information we have marked is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We find the remaining information you have marked is not highly intimate or embarrassing and a matter of no legitimate public concern. We therefore conclude the district may not withhold that information on privacy grounds under section 552.101.

We note the submitted information includes an e-mail address. Section 552.137 of the Government Code states "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c).[3] Gov't Code § 552.137(a)-(c). The district must withhold the e-mail address we have marked under section 552.137 of the Government Code unless the owner affirmatively consents to its public disclosure.[4]

In summary, the district (1) may withhold the information we have marked under Texas Rule of Evidence 503; (2) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) must withhold the e-mail address we have marked under section 552.137 of the Government Code unless the owner affirmatively consents to its public disclosure. The district must release the rest of the submitted information to the extent it has not already done so.

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

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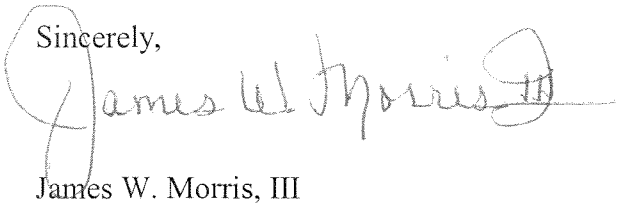
[3]This office will raise section 552.137 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

[4]We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.137 of the Government Code.

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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 437021

Enc: Submitted documents

c: Requestor
(w/o enclosures)