



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 3, 2012

Mr. John A. Kazen  
Kazen, Meurer & Pérez, L.L.P.  
P.O. Box 6237  
Laredo, Texas 78042-6237

OR2012-00075

Dear Mr. Kazen:

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# 440968.

The Laredo Independent School District (the "district"), which you represent, received a request for billing statements paid by the district to a specified law firm for RQ-066-GA, File No. ML-46733-11. You claim that the submitted information is privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

As you acknowledge, the submitted information consists of attorney fee bills subject to section 552.022(a)(16) 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." Gov't Code § 552.022(a)(16). You assert the submitted attorney fee bills are privileged under the attorney-client privilege of rule 503 of the Texas Rules of Evidence and the attorney work product privilege of rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court has held the Texas Rules of Evidence and the Texas Rules of Civil Procedure 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

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<sup>1</sup>You also raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. However, 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).*

assertion of the attorney-client and attorney work product privileges under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5 for the information at issue.

Texas Rule of Evidence 503 provides in relevant 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:

(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 information from disclosure 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 contend the attorney-client privilege is applicable to all the information in the submitted attorney fee bills. Alternatively, we understand you seek to withhold highlighted 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 highlighted 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 state the district has not 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 find the remaining information you have highlighted concerns communications with non-privileged parties or parties you have not demonstrated are privileged, does not reveal the content of a communication, or reveals the creation of a document but does not reflect whether the document was communicated. Thus, you have not demonstrated the elements of the attorney-client privilege with respect to the remaining information you seek to withhold. Consequently, the district may not withhold any of the remaining information under rule 503.

Texas Rule of Civil Procedure 192.5 encompasses the attorney work product privilege. For purposes of section 552.022 of the Government Code, information is confidential under rule 192.5 only to the extent the information implicates the core work product aspect of the work product privilege. *See* Open Records Decision No. 677 at 9-10 (2002). Rule 192.5 defines core work product as the work product of an attorney or an attorney's representative, developed in anticipation of litigation or for trial, that contains the mental impressions, opinions, conclusions, or legal theories of the attorney or the attorney's representative. *See* TEX. R. CIV. P. 192.5(a), (b)(1). Accordingly, in order to withhold attorney core work product from disclosure under rule 192.5, a governmental body must demonstrate the material was (1) created for trial or in anticipation of litigation and (2) consists of the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. *Id.*

The first prong of the work product test, which requires a governmental body to show the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate (1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation there was a substantial chance litigation would ensue and (2) the party resisting discovery believed in good faith there was a substantial chance litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *See Nat'l Tank v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204. The second part of the work product test requires the governmental body to show the materials at issue contain the mental impressions, opinions, conclusions, or legal theories of

an attorney or an attorney's representative. *See* TEX. R. CIV. P. 192.5(b)(1). A document containing core work product information that meets both parts of the work product test is confidential under rule 192.5, provided the information does not fall within the scope of the exceptions to the privilege enumerated in rule 192.5(c). *See Pittsburgh Corning*, 861 S.W.2d at 427.

You contend the remaining information contains attorney core work product that is protected by rule 192.5 of the Texas Rules of Civil Procedure. You state the information at issue was prepared or developed for anticipated litigation involving the district. Upon review, we find you have failed to demonstrate that any of the remaining information consists of mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative that were created for trial or in anticipation of litigation. Consequently, none of the remaining information may be withheld pursuant to rule 192.5.

In summary, the district may withhold the information we have marked under rule 503 of the Texas Rules of Evidence. The remaining information must be released.

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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 440968

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)