



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2012

Mr. Fortunato G. Paredes
For the United Independent School District
Escamilla, Poneck & Cruz, L.L.P.
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2012-03312

Dear Mr. Paredes:

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# 447071.

The United Independent School District (the "district"), which you represent, received a request for the report presented at a specified meeting, as well as the law firm bill for preparation of the report in question. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note you did not submit information responsive to the portion of the request seeking the law firm bill for the preparation of the report in question. To the extent the information responsive to this portion of the request existed and was maintained by the district on the date the district received the request for information, we presume the district has released it. If not, the district must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Next, we note a portion of the submitted information is subject to section 552.022(a)(3) of the Government Code, which provides for the required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds

¹Although you raise sections 552.101 and 552.103 of the Government Code, you make no arguments to support these exceptions. Accordingly, we understand the district no longer asserts these exceptions. *See* Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

by a governmental body,” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a). Although you raise section 552.107(1) of the Government Code for this information, section 552.107(1) is a discretionary exception to disclosure and does not make information confidential under the Act. *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). Therefore, the district may not withhold the information at issue, which we have marked, under section 552.107(1) of the Government Code. However, the Texas Supreme Court has held 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 Texas Rule of Evidence 503 for the information subject to section 552.022(a)(3). We will also consider your arguments under section 552.107(1) for the information that is not subject to section 552.022.

Texas Rule of Evidence 503 encompasses the attorney-client privilege. Rule 503(b)(1) provides as follows:

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 it is 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 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, orig. proceeding).

You assert the information at issue documents privileged attorney-client communications between outside attorneys and the district's board of trustees that was made for the purpose of the rendition of legal services to the district. You explain the information at issue relates to the rendition of legal opinions and advice concerning the district's legal rights and duties. You further explain the information was provided to the district's board of trustees by attorneys during an executive session meeting. You state the communications at issue were intended to be confidential and have remained confidential. Based on these representations and our review of the information at issue, we conclude the district may withhold the information subject to section 552.022(a)(3) under Texas Rule of Evidence 503.

Next, we consider your argument under section 552.107 of the Government Code for the information not subject to section 552.022(a)(3). Section 552.107(1) protects information coming within the attorney-client privilege. The elements of the privilege under section 552.107 are the same as those discussed for rule 503. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the remaining information also pertains to the district's role as a beneficiary, and was provided by outside attorneys during the board of trustees executive session meeting. You also state the communications at issue were intended to be confidential and have remained confidential. Based on these representations and our review, we conclude the remaining information constitutes privileged attorney-client communications. Accordingly, the district may withhold the remaining information under section 552.107(1) of the Government Code.

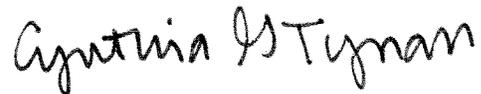
In summary, the district may withhold the information subject to section 552.022(a)(3) under Texas Rule of Evidence 503. The district may withhold the remaining information under section 552.107(1) of the Government Code.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 447071

Enc. Submitted documents

c: Requestor
(w/o enclosures)