ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 27, 2012

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

OR2012-09918

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# 457285 (District IDs 4760 and 4769).

The Lake Travis Independent School District (the "district") received a request for billing statements, invoices, and receipts for legal expenses received or paid during February and March 2012.[1] You state the district is providing the requestor with the opportunity to review some of the requested information. You further state the district is releasing redacted copies of some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information consists of attorney fee bills that are 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 expressly confidential under the Act or other law. Gov't Code § 552.022(a)(16). Although you seek

[1]This ruling address the request for information identified by district ID 4760. You inform us you withdraw your request for a ruling with respect to the other request for information, district ID 4769, as the district has released the responsive information to the requestor.

to withhold the attorney fee bills under section 552.107 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests 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), 663 at 5 (1999) (waiver of discretionary exceptions). As such, section 552.107 does not make information confidential for the purposes of section 552.022(a)(16), and the district may not withhold any of the submitted information on that basis. However, the Texas Supreme Court has held that 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 address your attorney-client privilege claim under rule 503 of the Texas Rules of Evidence for the submitted fee bills.

Texas Rule of Evidence 503(b)(1) provides:

> 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
> >
> > (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, no writ).

You assert the submitted fee bills are privileged in their entirety under rule 503. 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 that each of the substantive billing entries in the fee bills, which you have marked, is privileged under rule 503. You state the fee bills contain confidential communications between privileged parties, most of whom you have identified as the district's officials, staff, and outside legal counsel. You state these communications were made for the purpose of facilitating the rendition of professional legal services to the district and were intended to be, and have remained, confidential. Accordingly, the district may withhold the information we have marked on the basis of the attorney-client privilege under Texas Rule of Evidence 503. We note, however, that the remaining information either does not document communications or consists of communications with parties who you have not established are privileged parties for purposes of Texas Rule of Evidence 503. Therefore, we find you have failed to demonstrate that Texas Rule of Evidence 503 is applicable to the remaining information, and it may not be withheld on that basis. As you raise no additional exceptions to disclosure for the remaining information, it must be released to the requestor.

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,

Misty H Barham

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 457285

Enc. Submitted documents

c: Requestor
(w/o enclosures)