



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2012

Ms. Brandy N. Davis
Counsel for the Princeton Independent School District
Abernathy Roeder Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2012-15979

Dear Ms. Davis:

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# 468419.

The Princeton Independent School District (the "district"), which you represent, received a request for four categories of information pertaining to the district's "Bring Your Own Technology" policy.¹ You claim that portions of the submitted information are excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note you have not submitted information responsive to categories 3 and 4 of the request. To the extent information responsive to these portions of the request existed on the date the district received the request, we assume you have released it. If you have not

¹You state, and provide documentation showing, the district sought and received clarification of the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear or large amount has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

released such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note that a portion of the submitted information consists of an attorney fee bill which is 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 "made confidential under the Act or other law." *Id.* § 552.022(a)(16). Although you seek to withhold this information under section 552.107 of the Government Code, this exception is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *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). As such, this exception does not make information confidential for the purposes of section 552.022(a)(16), and the district may not withhold any of the information at issue under section 552.107 of the Government Code. The Texas Supreme Court has held, however, 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 information subject to section 552.022(a)(16). We will also address your claim under section 552.107 for the information not subject to section 552.022(a)(16) of the Government Code.

Texas Rule of Evidence 503 enacts 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 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 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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You claim the submitted fee bill, which we have marked, is confidential in its entirety. However, section 552.022(a)(16) of the Government Code provides “information that is *in* a bill for attorney’s fees” is not excepted from required disclosure unless it is confidential under the Act, “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 bill are privileged under rule 503. You state the information within the submitted attorney fee bill reveals confidential communications with privileged parties, which you have identified as representatives of the district and the district’s outside counsel and staff. You also state these communications were made for the purpose of facilitating the rendition of professional legal services to the district. Based on your representations and our review, we conclude the information we marked may be withheld under Texas Rule of Evidence 503. However, you have failed to demonstrate the remaining information in the submitted fee bill reveals communications between privileged parties. *See ORD 676*. Thus, the remaining information in the submitted fee bill is not privileged under rule 503 and may not be withheld on that basis.

Next, you claim the information not subject to section 552.022(a)(16) is excepted from disclosure under section 552.107 of the Government Code. Section 552.107(1) protects information that comes within the attorney-client privilege. The elements of the privilege

under section 552.107 are the same as those discussed above for rule 503. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* ORD No. 676 at 6-7. 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 information you have marked consists of an attorney-client privileged communication between the district's representatives and the district's outside counsel in furtherance of the rendition of professional legal services. You have identified the parties to the communication, and state the communication was not intended to be disclosed to third persons. Based on your representations and our review, we find the district has demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the district may withhold the information you have marked that is not subject to section 552.022(a)(16) under section 552.107 of the Government Code.

In summary, the district may withhold the information we have marked in the attorney fee bill under Texas Rules of Evidence 503, and the information you have marked that is not subject to section 552.022(a)(16) under section 552.107 of the Government Code. 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, 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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 468419

Enc. Submitted documents

c: Requestor
(w/o enclosures)