



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 27, 2012

Mr. William M. Buechler
Buechler & Associates, P.C.
3660 Stoneridge Road, Suite D-101
Austin, Texas 78746

OR2012-18989

Dear Mr. Buechler:

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# 472040.

The Novice Independent School District (the "district"), which you represent, received a request for (1) agenda notices and minutes for a particular time period; (2) budgets, expenditures, and legal bills pertaining to specified time periods; (3) correspondence regarding consolidation, detachment, annexation, and debt payments to the Texas Education Agency (the "TEA"); (4) information related to reports by TEA conservators and monitors; (5) hardship request documents submitted to TEA; (6) justification for a named employee's salary increase; (7) education, cooperative, and local consolidation agreements. 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 and Texas Disciplinary Rule of Professional Conduct 1.05. We have considered your claims and reviewed the submitted information.

Initially, we note you have not submitted information responsive to some of the categories 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 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 Exhibit D 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.” Gov’t Code § 552.022(a)(16). Although you seek to withhold this information under section 552.107(1) 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(1) 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 note, however, the Texas Disciplinary Rules of Professional Conduct are not considered other law for purposes of section 552.022. Therefore, we do not address your argument under rule 1.05, and none of the information at issue may be withheld on this basis. *See* ORD 676 at 3-4. 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 assert the billing entries you have marked in the fee bill are privileged under rule 503. You state the marked information reveals confidential communications with privileged parties, some of whom you have identified as representatives of the district and the district's outside counsel. 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 determine the information we marked in Exhibit D may be withheld under Texas Rule of Evidence 503. However, you have failed to demonstrate the remaining information you have marked in the submitted fee bill reveals communications between privileged parties. *See* ORD 676. Thus, the remaining information you have marked 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) in Exhibits C and C-2 is excepted from disclosure under section 552.107(1) 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(1) 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 assert the information in Exhibits C and C-2 consists of attorney-client privileged communications between the district's superintendent and the district's outside counsel in furtherance of the rendition of professional legal services. You have identified some of the parties to the communications, and we are able to discern the identities of others. You state the communications were 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 some of the information at issue. However, we find the district has not established the applicability of the attorney-client privilege to the remaining

information you seek to withhold under section 552.107(1), and the district may not withhold it from release on that ground. Accordingly, except as we have otherwise marked for release, the district may generally withhold the information in Exhibits C and C-2 under section 552.107(1) of the Government Code.

We note, however, some of the e-mail strings in Exhibits C and C-2 include e-mails and attachments received from or sent to non-privileged parties. Furthermore, if the e-mails received from or sent to non-privileged parties are removed from the e-mail strings and stand alone, they are responsive to the request for information. Therefore, if these non-privileged e-mails and attachments, which we have marked, are maintained by the district separate and apart from the otherwise privileged e-mail strings in which they appear, then the district may not withhold these non-privileged e-mails and attachments under section 552.107(1) of the Government Code.

In summary, the district may withhold the information we have marked in the attorney fee bill in Exhibit D under Texas Rules of Evidence 503. Except as we have otherwise marked for release, the district may generally withhold the information in Exhibits C and C-2 under section 552.107 of the Government Code; however, if the non-privileged e-mails and attachments, which we have marked, are maintained by the district separate and apart from the otherwise privileged e-mail strings in which they appear, then the district may not withhold these non-privileged e-mails and attachments under section 552.107(1) 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 472040

Enc. Submitted documents

c: Requestor
(w/o enclosures)