



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 30, 2014

Ms. Maria Miller  
Legal Assistant  
Dallas County Community College District  
1601 South Lamar Street, Suite 208  
Dallas, Texas 75215-1816

OR2014-07221

Dear Ms. Miller:

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# 521247.

The Dallas County Community College District (the "district") received a request for investigative reports pertaining to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code, and privileged under rule 503 of the Texas Rules of Evidence.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation that is subject to section 552.022(a)(1) and must be released unless it is either excepted under section 552.108 of the Government Code or confidential under the Act or other law. Although you assert this information is excepted from disclosure under

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 677 (2002), 676 (2002).

sections 552.103 and 552.107 of the Government Code, these sections are discretionary and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 6 (2002) (attorney-client privilege under section 552.107(1) may be waived), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the submitted information under section 552.103 or section 552.107 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence are “other law” that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will address your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the submitted information. We will also consider your claim under section 552.101 of the Government Code for the information at issue, as section 552.101 makes information confidential under the Act.

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

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).

Accordingly, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must do the following: (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. *See* ORD 676. Upon a demonstration of all three factors, the entire communication is confidential under rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You state the submitted information was prepared by legal counsel for the district and communicated to and between district employees. You state this communication was made for the purpose of the rendition of professional legal services to the district, and inform us the communication was intended to be and has remained confidential. Based on these representations and our review, we find the district has established the attorney-client privilege is applicable to the submitted information. Accordingly, the district may withhold the submitted information under rule 503 of the Texas Rules of Evidence.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Miriam A. Khalifa  
Assistant Attorney General  
Open Records Division

MAK/akg

Ref: ID# 521247

Enc. Submitted documents

c: Requestor  
(w/o enclosures)