



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 18, 2016

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

OR2016-18675

Dear Ms King:

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# 623285.

The Lake Travis Independent School District (the "district") received two requests from the same requestor for information regarding legal expenses and communications between the district and two specified entities from a specified time period. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

We note, and you acknowledge, the information submitted as Exhibit A 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

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

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). 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 address your claim of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the submitted attorney fee bills.

Texas Rule of Evidence 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 to facilitate the rendition of professional legal services to the client:

(A) between the client or the client's representative and the client's lawyer or the lawyer's representative;

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; 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 portions of the submitted fee bills, which you have marked, should be withheld under rule 503. You state the submitted fee bills include privileged attorney-client communications between the district's attorneys, outside counsel and district officials and staff in their capacities as clients. You state the communications at issue were made for the purpose of the rendition of legal services to the district. You state the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on your representations and our review of the information at issue, we find the district may withhold some of the information you have marked under Texas Rule of Evidence 503. However, some of the communications are with individuals you have not demonstrated are privileged parties. Further, some of the information does not document a communication. Thus, we find the information we marked does not constitute privileged attorney-client communications for the purposes of Texas Rule of Evidence 503. Therefore, the district may not withhold the information we marked pursuant to Texas Rule of Evidence 503.

Next, you assert the information submitted as Exhibit C consists of information made confidential by section 154.073 of the Civil Practice and Remedies Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. Gov't Code § 552.101. Section 552.101 encompasses section 154.073 of the Civil Practice and Remedies Code which provides in relevant part:

(a) Except as provided by Subsections (c), (d), (e), and (f), a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(b) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings related to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

Civ. Prac. & Rem. Code § 154.073(a), (b). You state the information in Exhibit C represents communications between the district's general counsel and representatives of the Office of Civil Rights specifically regarding a facilitated mediation attempt. Upon review, we agree this information consists of communications relating to the subject matter of the dispute made by a participant in an alternative dispute resolution procedure. Accordingly, we find

the information in Exhibit C is confidential under section 154.073 of the Civil Practice and Remedies Code and must be withheld under section 552.101 of the Government Code.

In summary, except for the information we marked for release, the district may withhold the information you have marked in Exhibit A pursuant to rule 503 of the Texas Rules of Evidence. The district must withhold the information submitted in Exhibit C under section 552.101 of the Government Code in conjunction with section 154.073 of the Civil Practice and Remedy 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.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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/akg

Ref: ID# 623285

Enc. Submitted documents

c: Requestor
(w/o enclosures)