



June 27, 2002

Dr. Fernando Castillo  
Superintendent of Schools  
La Villa Independent School District  
P.O. Box 9  
La Villa, Texas 78562

OR2002-3499

Dear Dr. Castillo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164991.

The La Villa Independent School District (the "district") received a request for bills, billing statements, invoices, and requests for payment from certain attorneys as well as copies of all checks payable to the attorneys. You claim that some or all of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.107 of the Government Code as well as Texas Rule of Evidence 503. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We begin by noting that while you have submitted a sample of attorney fee bills, you have not submitted copies or a representative sample of the requested checks. Therefore, we assume that the district has released this information, to the extent it exists. If the district has not released this information, it must do so now. *See* Gov't Code §§ 552.301, .302.

Next, we note that the submitted fee bills are subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege . . . .

Gov't Code § 552.022(a)(16). Thus, the submitted information is expressly public and may only be withheld if it is privileged under the attorney-client privilege or is otherwise confidential under other law. Sections 552.103 and 552.107 are discretionary exceptions and are not other law for the purpose of section 552.022. Open Records Decision Nos. 663 (1999) (governmental body may waive sections 552.103), 630 at 4 (1994) (governmental body may waive section 552.107(1)). However, we will address your claims under sections 552.101 and 552.102 of the Government Code. Furthermore, the Texas Supreme Court recently held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will determine whether the submitted information is confidential under Texas Rule of Evidence 503.

We begin by addressing your argument that portions of attachments A and B are confidential under Rule 503. Rule 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:

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

(B) between the layer 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.

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. Tex. R. Evid. 503(a)(5).

Accordingly, 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 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 [14<sup>th</sup> Dist.] 1993, no writ). You state that the highlighted portions of attachments A and B reflect confidential communications between the district’s superintendent and the district’s attorney. Upon review, we find that the information highlighted in attachment A and a portion of the highlighted information in attachment B, which we have marked, reveal confidential attorney-client communications. Therefore, the district may withhold the highlighted portion of attachment A and the marked portion of attachment B under Texas Rule of Evidence 503.

Next, you contend that the information in attachment C is excepted from disclosure under section 552.102 of the Government Code. Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. You contend that the fee bill in attachment C contains information relating to the performance of the superintendent, and “disclosure of such information would constitute an unwarranted invasion of the employee’s personal privacy. . . .” Based on our review of the information in attachment C, however, we find that the information is not intimate or embarrassing. Furthermore, information relating to the employment of a public employee is a matter of legitimate public interest. See *Open Records Decision Nos. 444 at 5-6* (1986) (public has interest in public employee’s qualifications and performance and the circumstances of his resignation or termination), 423 at 2 (1984) (scope

of public employee privacy is narrow), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job). Therefore, we find that the information in attachment C is not excepted from disclosure under section 552.102 of the Government Code and must be released.

In summary, the district may withhold the highlighted information in attachment A and the information we have marked in attachment B under the attorney-client privilege as embodied in Texas Rule of Evidence 503. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 164988

Enc: Submitted documents

c: Mr. Juan E. Gonzalez  
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(w/o enclosures)