



August 26, 2002

Ms. Lisa Silvia
Paralegal
Fort Worth Independent School District
100 University Drive
Fort Worth, Texas 76107

OR2002-4737

Dear Ms. Silvia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167631.

The Fort Worth Independent School District (the "district") received a request for certain billing statements provided to the district by the law firm of Susman Godfrey L.L.P from the first billing period to May 31, 1997, from June 1, 1997 to December 31, 2000, and from January 1, 2001 to the present. For each of the above periods, the requestor also seeks "a copy of each and every summary and detailed payment statement that discloses the payments that [the district] made to [Susman Godfrey L.L.P]." We note that you did not submit any information responsive to the request for detailed payment statements for payments from the district to the law firm, nor do you inform us that you have released such information to the requestor, or that it does not exist. Therefore, to the extent such information exists, you must immediately release such information to the requestor if you have not already done so. *See* Gov't Code §§ 552.006, .301(a), .302; *see also* Gov't Code § 552.022(a)(3) (information in account, voucher, or contract relating to receipt or expenditure of public or other funds by governmental body is expressly public unless made confidential by other law). You claim that the requested billing statements are excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exception you claim

and reviewed the submitted information.¹ We have also considered the correspondence submitted to this office by the requestor. *See* Gov't Code § 552.304 (permitting interested party to submit reasons why requested information should or should not be released).²

We first address the requestor's claim that the district did not timely submit its request for a ruling to this office. Subsections 552.301(a) and (b) of the Government Code provides:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

It appears from the documents submitted to this office that the district received the request for information under on June 6, 2002. The district had 10 *business* days in which to submit its request for a ruling to this office. For a request received on June 6, 2002, the 10 business-day deadline is June 20, 2002. The district submitted its request for a ruling to this office on June 20, 2002. Therefore, the request for a ruling was timely submitted by the district.

With regard to the submitted fee bills, we note that the fee bills are subject to section 552.022 of the Government Code, which provides in pertinent part as follows:

(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:

¹We note your assertion in your brief to this office that the same exact information that is at issue in this ruling has previously been ruled upon by this office. In a telephone conversation, you stated that the ruling you referred to was Open Records Letter Ruling No. 2002-3139 (2002). Upon review of that ruling and the documents at issue, however, we are unable to confirm that OR2002-3139 in fact addressed these very same billing statements. Therefore, we will address your claimed exceptions to disclosure for the submitted information.

²We note that the requestor claims to have made other requests for information to the district. The district has only submitted a request for a ruling to this office for information responsive to the requestor's June 6, 2002 request. Therefore, this ruling only addresses the district's request for a ruling for information responsive to the requestor's June 6, 2002 request.

....

(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). Under section 552.022, attorney fee bills must be released unless they are expressly confidential under other law. Sections 552.103 and 552.107 of the Government Code are discretionary exceptions under the Public Information Act and do not constitute "other law" for purposes of section 552.022. See Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential). However, the attorney-client privilege is also found in Rule 503 of the Texas Rules of Evidence. Recently, the Texas Supreme Court 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). We note that the Supreme Court did not hold that the Texas Disciplinary Rules of Professional Conduct are "other law" within the meaning of section 552.022. Thus, we will determine only whether the submitted information is excepted under Rule 503.

Texas Rule of Evidence 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 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. *See* Tex. R. Evid. 503(a)(5).

Thus, 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 privileged 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). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ); *see also* Tex. R. Evid. 511 (waiver of privilege by voluntary disclosure).

After review of your arguments and the submitted documents, we agree that much of the information in the submitted fee bills consists of confidential communications protected by the attorney-client privilege and Rule 503. We have marked the information to be withheld. We note, however, that some of the information in the submitted fee bills involves communications to or between individuals who we are unable to identify as employees of the district, the district’s outside counsel, or representatives of these parties. Accordingly, we are unable to conclude that communications involving such unidentified individuals are protected by the attorney-client privilege, and thus, this information must be released.

Finally, we note the requestor’s assertion that he has a special right of access under section 552.023 of the Government Code to confidential information that may be responsive to the request. Section 552.023 gives a person or a person’s authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person’s privacy interest. Because we find that a portion of the requested information is excepted from disclosure on grounds other than the requestor’s privacy interests, and because in any event, we find no information that implicates a privacy interest of the requestor, we conclude that the requestor has no special right of access to any of the submitted information under section 552.023.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 167631

Enc. Submitted documents

c: Mr. Homer Max Wiesen
P.O. Box 857
Denton, Texas 76202
(w/o enclosures)