OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 1, 2003

Mr. Stephen L. Crain
Atlas & Hall, L.L.P.
P.O. Box 3725
McAllen, Texas 78502-3725

OR2003-2937

Dear Mr. Crain:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180313.

The McAllen Independent School District (the "district"), which you represent, received two requests. The first sought "the investigative report that was prepared for our school district by Oxford and Oxford." The first request also asks "what firm was fired to search for a superintendent during the time that Dr. Gonzalez was eventually hired." The second request sought the results of a particular investigation and copies of settlement agreements between the district and two named individuals. You claim that the requested report is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code and state that you have released "the other responsive documents" to the second requestor. We have considered the exceptions you claim and reviewed the submitted information.

We note that the first request asks the district to answer a factual question. This office has stated on numerous occasions that the Public Information Act does not require governmental bodies to answer factual questions or perform legal research. *See, e.g.*, Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). A governmental body must only make a good faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990). We assume that the district has made a good faith effort to relate the entirety of both requests, including the question regarding the name of the search firm, to information the district maintains. We further assume that the district has identified and released any responsive information that it has not submitted for our review, to the extent that such information exists. If not, then it must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).

We next note that the submitted information constitutes a completed report and is therefore subject to section 552.022 of the Government Code. This section provides that "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," is public and may not be withheld unless it is expressly confidential under other law or excepted from disclosure by section 552.108. Gov't Code § 552.022(a)(1). You do not claim that submitted information is excepted under section 552.108. Instead, you assert that it may be withheld pursuant to sections 552.103 and 552.107. These sections are discretionary exceptions and are not "other law" for the purpose of section 552.022. *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. 663 (1999) (governmental body may waive section 552.103), 630 at 4 (1994) (governmental body may waive section 552.107(1)), 522 at 4 (1989) (discretionary exceptions in general). includes information that is subject to section 552.022.

However, the attorney-client privilege is also found in Rule 503 of the Texas Rules of Evidence. The Texas Supreme Court has 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). This office has determined that when the attorney-client privilege is claimed for information that is subject to release under section 552.022, the proper analysis is whether the information at issue is excepted under Texas Rule of Evidence 503. Open Records Decision No. 676 at 5-6 (2002). As you claim that the submitted information is privileged, we will consider whether it is excepted 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. *See* Open Records Decision No. 676 (2002). 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, 4527 (Tex. App.–Houston [14th Dist.] 1998, no pet.) (privilege attaches to complete communication, including factual information). Having considered your arguments and representations, we agree that the submitted report constitutes a privileged attorney-client communication.[1] Therefore, it may be withheld in its entirety pursuant to Rule 503.

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

---

[1]You inform this office that a local newspaper contends that it has obtained a portion of the submitted report. You assert, however, that if such information was in fact disclosed, the disclosure was not by anyone with authority to act on behalf of the district. Based on your representations, we conclude that you have not waived the privilege. *See* Tex. R. Evid. 511 (person who holds privilege may waive it if person "*voluntarily* discloses or consents to disclosure of any significant part of the privileged matter") (emphasis added).

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).

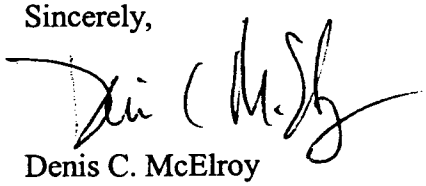
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 180313

Enc. Submitted documents

c: Mr. Juan Vega
7401 N. Ware Road
McAllen, Texas 78504
(w/o enclosures)