



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2006

Mr. David Galbraith
Assistant General Counsel
Houston Independent School District
Hattie Mae White Educational Support Center
4400 West 18th Street
Houston, Texas 77092-8501

OR2006-11955

Dear Mr. Galbraith:

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# 261798.

The Houston Independent School District (the "district") received a request for two categories of information pertaining to a specified legal matter involving the district, specifically: (1) a copy of the attorney fee bills submitted by Bracewell & Patterson to the district; and (2) a list of the vendors who responded to a specified Request for Proposals and the names of two partners and an expert who assisted the district in the selection process. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that you failed to submit any information responsive to the second category of the request. To the extent that any responsive information exists, you must release it to the requestor. Gov't Code §§ 552.301(e), .302.

Next, we note that the submitted information consists of attorney fee bills subject to section 552.022 of the Government Code. This section enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law.

Section 552.022(a)(16) defines one such category as “[i]nformation that is in a bill for attorney’s fees and that is not privileged under the attorney-client privilege.” The submitted attorney fee bills must therefore be released under section 552.022(a)(16) unless the information is expressly made confidential under other law.

You claim that the submitted attorney fee bills are excepted from disclosure under sections 552.101, 552.103 and 552.107 of the Government Code. However, sections 552.103 and 552.107 of the Government Code are discretionary exceptions under the Act and do not constitute “other law” that renders information expressly confidential for purposes of section 552.022. Open Records Decision No. 630 at 4 (1994) (governmental body may waive section 552.107(1)); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.–Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Therefore, the district may not withhold the submitted information under either section 552.103 or section 552.107 of the Government Code. The district also raises section 552.101 of the Government Code, which does constitute “other law” for the purposes of section 552.022.

Further, we note that 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). Thus, 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 rather than under section 552.107 of the Government Code. Open Records Decision No. 676 at 5-6 (2002). We will therefore consider your claims under section 552.101 of the Government Code and the attorney-client privilege.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” However, you have not directed our attention to any law, nor are we aware of any, under which any of the submitted information is considered confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). Therefore, the district may not withhold any of the submitted information on the basis of section 552.101 of the Government Code.

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 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); *see id.* 503(a)(2), (a)(4) (defining "representative of the client," "representative of the lawyer."). 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.* at 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. Open Records Decision No. 676 (2002). Upon a demonstration of all three factors, the document containing 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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You assert that the submitted fee bills include confidential communications between representatives of the district and its attorneys. Based on your representations and our review of the submitted information, we find that you have established some of the information you seek to withhold on this basis is protected by the attorney-client privilege. We have marked the information the district may withhold pursuant to rule 503 of the Texas Rules of Evidence. However, we find that you have failed to establish the applicability of rule 503 to any of the remaining information. *See Strong v. State*, 773 S.W.2d 543, 552 (Tex. Crim. App. 1989) (burden of establishing attorney-client privilege is on party asserting it). Therefore, none of the remaining information may be withheld on this basis.

In summary, the district must withhold the information we have marked pursuant to Texas Rule of Evidence 503. The district must release the remainder of the information 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

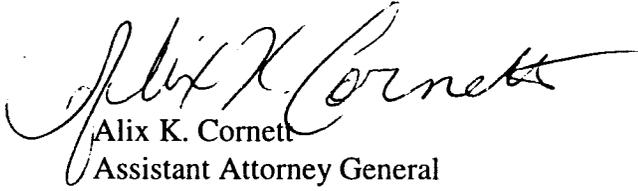
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "Alix K. Cornett". The signature is fluid and cursive, with a large initial "A" and "C".

Alix K. Cornett
Assistant Attorney General
Open Records Division

AKC/krl

Ref: ID# 261798

Enc. Submitted documents

c: Mr. Frank Watson
c/o Mr. David Galbraith
Assistant General Counsel
Houston Independent School District
Hattie Mae White Educational Support Center
4400 West 18th Street
Houston, Texas 77092-8501
(w/o enclosures)