



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2006

Ms. Ann Greenberg
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
Attorney for El Paso Independent School District
P.O. Box 2156
Austin, Texas 78768

OR2006-14837

Dear Ms. Greenberg:

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# 267475.

The El Paso Independent School District (the "district"), which you represent, received a request for three categories of information pertaining to the employment of and payment to your law firm during a specified time period. You state that the district has released some of the requested information, but claim that the submitted information is excepted from disclosure under sections 552.107 and 552.136 of the Government Code, as well as Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.

Initially, we note that most of the submitted information is subject to section 552.022 of the Government Code. Specifically, this section provides that "information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege" is public and may not be withheld unless it is expressly confidential under other law. Gov't Code § 552.022(a)(16). Thus, information contained in attorney fee bills must be released under section 552.022(a)(16) unless it is expressly confidential under other law. You assert that the information contained in the submitted fee bills is protected by section 552.107 of the Government Code. Section 552.107 is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. See Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2

n.5 (2000) (discretionary exceptions generally). However, 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.” See *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your arguments under rule 503 of the Texas Rules of Evidence for the information subject to section 552.022.

Rule 503 of the Texas Rules of Evidence encompasses the attorney-client privilege and provides as follows:

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. *Id.* 503(a)(5). Thus, 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 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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You assert that the information at issue consists of confidential communications between representatives of the district and its attorneys that were made in furtherance of the rendition of professional legal services. Based on your representations and our review of the submitted information, we find that you have established that 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. Therefore, none of the remaining information at issue may be withheld on this basis.

Finally, we address your argument under section 552.136 of the Government Code for the information that is not subject to section 552.022 of the Government Code. You raise section 552.136 for a frequent flyer number. Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. We agree that the frequent flyer number that you have marked must be withheld under section 552.136.

In summary, the district may withhold the information we have marked under rule 503 of the Texas Rules of Evidence. Pursuant to section 552.136 of the Government Code, the district must withhold the frequent flyer number that you have marked. The remaining submitted information must be released.

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

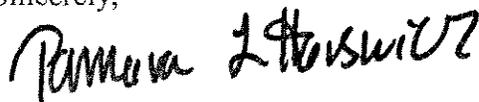
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/jww

Ref: ID# 267475

Enc. Submitted documents

c: Mr. Gary Gonzalez
4732 Tetons Drive
El Paso, Texas 79904
(w/o enclosures)