

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 13, 2008

Mr. William Christian
Graves Dougherty Hearon & Moody, P.C.
P.O. Box 98
Austin, Texas 78767

OR2008-06518

Dear Mr. Christian:

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# 312029.

The Del Mar College District (the "college"), which you represent, received a request for billing and other cost information pertaining to specified litigation against the college, including the personal billing records of a former college president. You state that the college does not possess or have access to the personal billing records of the college's former president.¹ You inform us that the college will release some of the requested information pursuant to the previous determination set forth in Open Records Letter No. 2008-02231 (2008).² You also state that some of the requested information will be released, but claim that some of the requested information is excepted from disclosure under section 552.107 of the Government Code and protected under Texas Rule of Evidence 503

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

and Texas Rule of Civil Procedure 192.5.³ We have considered your arguments and reviewed the submitted information.

Initially, we must address the college's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. The college received the request for information on March 11, 2008, and you inform us that the college was closed from March 17 through March 21 of 2008; however, you did not assert that some of the requested information is excepted from release under Texas Rule of Criminal Procedure 192.5 until April 8, 2008. *See* Gov't Code § 552.301(b). Thus, the college failed to comply with the requirements mandated by section 552.301 in regards to its arguments under rule 192.5.⁴

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Texas Rule of Civil Procedure 192.5 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision No. Open Records Decision Nos. 677 at 10 (2002) (attorney work-product privilege under section 552.111 or rule 192.5 is not compelling reason to withhold information under section 552.302); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). In failing to comply with section 552.301, the college has waived its claim under rule 192.5; therefore, the college may not withhold any of the submitted information on that ground.

You next acknowledge, and we agree, that the submitted information consists of attorney fee bills that are subject to section 552.022 of the Government Code. Section 552.022(a)(16) provides that information in a bill for attorney fees that is not protected under the attorney-client privilege is not excepted from required disclosure unless it is expressly confidential under other law; therefore, information within these fee bills may only be withheld if it is confidential under other law. Section 552.107 is a discretionary exception

³Although you raise section 552.101 in conjunction with the attorney-client and work product privileges, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

⁴We note that the college complied with section 552.301 in regards to its other arguments to withhold the information at issue.

to disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision No. 676 at 6 (2002) (section 552.107 is not other law for purposes of section 552.022); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). As such, section 552.107 is not other law that make information confidential for the purposes of section 552.022; therefore, the college may not withhold the fee bills under this section. However, the Texas Supreme Court has held that the Texas Rules of Evidence are "other law" that makes information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your arguments under Texas Rule of Evidence 503.

Rule 503(b)(1) provides the following:

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).

Accordingly, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must do the following: (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, 457 (Tex. App.—Houston [14th Dist.] 1998, no pet.) (privilege attaches to complete communication, including factual information).

Having considered your representations and reviewed the information at issue, we find you have not established that some of the information you seek to withhold consists of privileged attorney-client communications; therefore, the college may not withhold this information, which we have marked for release, under rule 503. However, we agree that the remaining information at issue constitutes privileged attorney-client communications; therefore, with the exception of the information that we have marked for release, the college may withhold the yellow-highlighted information under Texas Rule of Evidence 503. The college must release the remaining submitted information.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

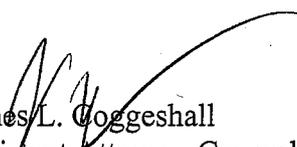
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jh

Ref: ID# 312029

Enc. Submitted documents

c: Mr. Bruce A. Olson
231 Oleander Avenue
Corpus Christi, Texas 78404
(w/o enclosures)

CAUSE NO. D-1-GN-08-002066

DEL MAR COLLEGE DISTRICT,
Plaintiff,

V.

GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS,
Defendant.

§ IN THE DISTRICT COURT OF
§
§
§ TRAVIS COUNTY, TEXAS
§
§
§ 345TH JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

JL FEB 27 2009
At 9:13 A.M.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff, Del Mar College District, and Defendant, Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. The requestor, Bruce Olson, did not appear. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552 (West 2004 & Supp. 2008). The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), (1) the requestor was sent reasonable notice of this setting and of the parties' agreement that the District may withhold the information at issue, and (2) the requestor was also informed of his right to intervene in the suit to contest the withholding of this information. Although the requestor initially filed a letter stating his intent to intervene, the requestor has since stated, in writing, that he does not wish to intervene or contest the Motion for Agreed Judgment. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The descriptions, or parts thereof, in the fee bills received by the District and responsive to Mr. Olson's March 11, 2008 request for information, as marked by the Office of the

Attorney General, are confidential under Tex. R. Evid. 503.

2. The consulting expert materials in the District's Exhibit 1 to the District's April 14, 2008 letter to the Chief, Open Records Division, OAG, are confidential under Tex. R. Evid. 503 (Exhibit 1(D)) or Tex. R. Civ. P. 192.3(e) (remaining parts of Exhibit 1).

3. The District may redact the descriptions, or parts thereof, in the attorney fee bills as enumerated in ¶ 1 of Agreed Final Judgment, along with any other information in the attorney fee bills that the Attorney General determined was excepted from disclosure in OR2008-06518. The District may withhold Exhibit 1 in its entirety.

4. If it has not already done so, the District shall disclose the attorney fee bills, with the information described in ¶ 1 of this Agreed Final Judgment redacted, to the requestor, promptly upon receipt by the District of an agreed final judgment signed by the Court.

5. All costs of court are taxed against the parties incurring the same;

6. All relief not expressly granted is denied; and

7. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 27th day of February, 2009.

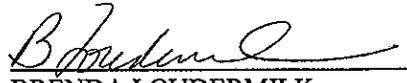


PRESIDING JUDGE

APPROVED:



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