



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2009

Ms. Susan K. Bohn
General Counsel
Lake Travis Independent School District
3322 Ranch Road 620 South
Austin, Texas 78738

OR2009-00914

Dear Ms. Bohn:

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# 333017 (102708-R068/DL 3504, 102708-R071/DL 3507, and 102708-R073/DL 3509).

The Lake Travis Independent School District (the "district") received eleven requests from the same requestor on the same day. You have submitted three requests to this office: two pertain to presentation materials used in specified training sessions and one pertains to receipts and reimbursements for a named individual since May 1, 2006. You state that you are releasing a portion of the requested information. You claim a portion of the submitted information is not subject to the Act. You also claim that some of the submitted information is excepted from disclosure under sections 552.107 and 552.117 of the Government Code.¹ You also state that you notified the Texas Association of School Boards ("TASB") of the district's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received

¹The requestor has agreed to the redaction of information subject to section 552.136 of the Government Code. Accordingly, any of this information within the submitted documents is not responsive to the present request and we do not address such information in this ruling.

comments from TASB. We have considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.²

Initially, you assert the information in Tab 3 is not subject to the Act. The Act is applicable to "public information." Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" means "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Information is generally public information under the Act when it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. *See* Open Records Decision No. 635 at 4 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving de minimis use of state resources). Further, the characterization of information as "public information" under the Act is not dependent on whether the requested records are in the possession of an individual or whether a governmental body has a particular policy or procedure that establishes a governmental body's access to the information. *See id.* at 3-4 (finding that information does not fall outside definition of "public information" in Act merely because individual member of governmental body possesses information rather than governmental body as whole); *see also* Open Records Decision No. 425 (1985) (concluding, among other things, that information sent to individual school trustees' homes was public information because it related to official business of governmental body) (overruled on other grounds by Open Records Decision No. 439 (1986)).

You explain that the information in Tab 3 consists of a presentation given to non-district employees during a presentation that did not involve district business. You also state that the information at issue does not contain any information about the district, the district did not require this presentation to be prepared, and the documents are not necessary to, or in furtherance of official district business. Based on your representations and our review, we find that Tab 3 does not relate to the transaction of official district business, and thus, does not constitute public information of the district. Accordingly, the district is not required to disclose Tab 3 under the Act. *See* ORD 635.

Next, you and TASB state that the information in Tab 4 is commercially available information. Section 552.027 of the Government Code provides as follows:

- (a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Gov't Code § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. The legislative history of this provision notes that section 552.027 should exclude from the definition of public information

books and other materials that are also available as research tools elsewhere to any member of the public. Thus, although public library books are available for public use, the library staff will not be required to do research or make copies of books for members of the public.

INTERIM REPORT TO THE 74TH LEGISLATURE OF THE HOUSE STATE AFFAIRS COMM., 74th Leg., R.S., SUBCOMMITTEE ON OPEN RECORDS REVISIONS 9 (1994).

You state that the information in Tab 4 consists of a DVD the district purchased from TASB for training purposes. You indicate that the DVD is not made part of, incorporated into, or referred to in a rule or policy of the district. TASB further states that the DVD is a copyrighted publication that is available for sale to TASB members as well as the public at large. Based on these representations, we find the district has established that the information at issue is "information in a commercial book or publication purchased or acquired by the governmental body for research purposes ... [and is] commercially available to the public." Gov't Code § 552.027(a). Accordingly, the information in Tab 4 need not be released.

We now address your arguments against disclosure for the remaining information at issue. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental

body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was “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).

Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein). The district asserts that the documents in Tabs 1 and 2 are confidential communications between an attorney for and employees of the district made for the purpose of rendering professional legal advice. You state that the confidentiality of these communications has been maintained. Based on these representations and our review of the information, we agree that the information in Tabs 1 and 2 consists of privileged attorney-client communications that the district may withhold under section 552.107.

Section 552.117 of the Government Code excepts from disclosure the home address, personal telephone number, social security number, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5* (1989). The district may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You have marked the home address belonging to current district employee. You state that the employee at issue timely elected under section 552.024 to keep her personal information confidential. Based on your representations and our review of the information at issue, we

find that the district must withhold the information you have marked in Tab 5 pursuant to section 552.117 of the Government Code.

In summary, Tab 3 is not public information subject to the Act and need not be released, and Tab 4 is subject to section 552.027 of the Government Code, and need not be released. The district may withhold Tabs 1 and 2 under section 552.107 of the Government Code. The district must withhold the information you have marked in Tab 5 pursuant to section 552.117 of the Government Code. The remaining responsive information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 333017

Enc. Submitted documents

cc: Requestor
(w/o enclosures)