



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2009

Ms. Ellen H. Spalding
Feldman, Rogers, Morris & Grover, L.L.P
5719 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2009-01585

Dear Ms. Spalding:

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# 333092.

The Eanes Independent School District (the "district"), which you represent, received a request for: (1) records showing the dates and times of all communications between and among two employees of the district and an attorney representing the district over a particular time period; (2) information pertaining to a named student, including information made available to the district board of trustees, information pertaining to a "Mandatory Removal to DAEP" order, and two specified rulings; and (3) the bills and descriptions for legal services provided to the district by Feldman, Rogers, Morris & Grover, L.L.P over a particular time period. You state that the district is withholding some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.¹ You state the district will release some of the requested information. You claim that portions of the submitted information are privileged pursuant to Texas Rule of Evidence 503 in conjunction with section 552.101 of the Government Code. We have considered your

¹We note that the United States Department of Education Family Policy Compliance Office (the "DOE") informed this office that FERPA, 20 U.S.C. § 1232(a), does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

argument and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

As a preliminary matter, we note that you have failed to fully comply with section 552.301 of the Government Code. 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. *See id.* § 552.301(a), (b). You state that the district received the present request for information on October 28, 2008. Therefore, you were required to submit your request for a decision, stating the exceptions that apply, by November 12, 2008.² Although you timely submitted your initial request for a decision to this office, you only raised section 552.101 of the Government Code as an exception to disclosure of the submitted information. You did not raise Texas Rule of Evidence 503 until November 14, 2008.

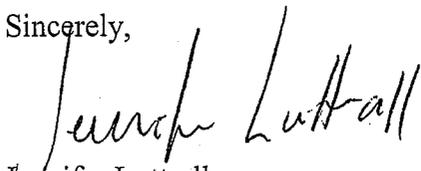
Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section does not encompass Texas Rule of Evidence 503 because it is not constitutional law, statutory law, or a judicial decision. Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Thus, your claim under rule 503 is not made timely by your original claim under section 552.101 of the Government Code. Consequently, we find the district has failed to comply with the ten-business-day deadline mandated by section 552.301(b) with respect to your claim under Texas Rule of Evidence 503. We note that the attorney-client privilege under Texas Rule of Evidence 503 is discretionary and may be waived. *See* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 522 at 4 (1989) (discretionary exceptions in general). Accordingly, in failing to timely raise it, we conclude the district has waived its claim under Texas Rule of Evidence 503. *See* ORD 676 at 12 (claim of attorney-client privilege under section 552.107 or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights). As you make no further arguments against disclosure, the submitted information must be released.

²In your submission to this office dated November 26, 2008, you describe communications between the district and the requestor. Pursuant to section 552.303 of the Government Code, this office notified the district by letter to provide additional information regarding these communications. We required the additional information in order to determine if the ten-business-day deadline mandated by section 552.301(b) was tolled during any of these communications. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification). Upon review of your response to our request for additional information, we conclude that the district's deadline for seeking a ruling in accordance with section 552.301(b) was not tolled.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 333092

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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