



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 1, 2009

Ms. Leticia D. McGowan  
School Attorney  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204-5491

OR2009-05815

Dear Ms. McGowan:

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# 341613.

The Dallas Independent School District (the "district") received two requests for (1) reports and/or summaries written by the district's outside counsel regarding its investigation into alleged grade changing and the awarding of credits to athletes over a specified time frame, and (2) copies of all invoices, receipts, and/or bills related to this investigation paid by the district to three specific law firms. You state that the district has released the requested report and documentation reflecting the total payments made to the law firms. You claim that the submitted information is privileged under Texas Rule of Evidence 503.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

As you acknowledge, the submitted information is subject to section 552.022(a)(16) of the Government Code, which provides that information in a bill for attorney's fees must be released unless it is privileged under the attorney-client privilege or is expressly confidential under other law. *See* Gov't Code § 552.022(a)(16). The Texas Supreme Court has held that the 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). Accordingly, we will consider your claim that the submitted information is privileged under Texas Rule of Evidence 503.

Rule 503 enacts the attorney-client privilege, providing in relevant part:

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<sup>1</sup>Although you also raise section 552.101 of the Government Code, you do so in conjunction with rule 503. This office has previously concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision No. 647 at 2 (1996). Therefore, we understand rule 503 to fully encompass your arguments.

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

You claim that the submitted information is confidential in its entirety under Texas Rule of Evidence 503. However, section 552.022(a)(16) of the Government Code provides that information "that is *in* a bill for attorney's fees" is not excepted from required disclosure unless it is confidential under other law or privileged under the attorney-client privilege. *See* Gov't Code § 552.022(a)(16) (emphasis added). This provision, by its express language, does not permit the entirety of an attorney fee bill to be withheld. *See* Open Records

Decision Nos. 676 (2002) (attorney fee bill cannot be withheld in entirety on basis it contains or is attorney-client communication pursuant to language in section 552.022(a)(16)), 589 (1991) (information in attorney fee bill excepted only to extent information reveals client confidences or attorney's legal advice). This office has found that only information that is specifically demonstrated to be protected by the attorney-client privilege or made confidential by other law may be withheld from fee bills. *See* ORD No. 676.

You state that the submitted fee bills consist of confidential attorney-client communications that were made in furtherance of the rendition of professional legal services to the district. You also state that these communications have remained confidential and have not been revealed to any third party. However, you have not identified any of the parties to these communications. *See* ORD 676 at 8 (governmental body must inform this office of identities and capacities of individuals to whom each communication at issue has been made; this office cannot necessarily assume that communication was made only among categories of individuals identified in rule 503); *see generally* Open Records Decision No. 150 (1977) (predecessor to Act places burden on governmental body to establish why and how exception applies to requested information); *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, with the exception of parties whose identities are made self-evident by the documents themselves, we are unable to discern which parties are privileged. Accordingly, we conclude that, under rule 503, the district may withhold only the portions of the submitted information we have marked. You have failed to establish that the remaining information consists of confidential communications; we therefore conclude that the district may not withhold any of the remaining information under the attorney-client privilege of rule 503.

We next note that the remaining information contains information subject to sections 552.130, 552.136, and 552.137 of the Government Code.<sup>2</sup> Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). Therefore, the district must withhold the Texas license plate numbers we have marked pursuant to this section.

Section 552.136(b) of the Government Code states that "[n]otwithstanding any other provision of [the Act], 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." *Id.* § 552.136(b). Therefore, the district must withhold the partial credit card numbers, frequent flyer numbers, and account numbers we have marked pursuant to section 552.136. *See id.* § 552.136(a) (defining "access device").

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions, such as sections 552.130, 552.136, and 552.137, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

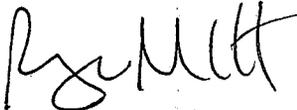
Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Therefore, the district must withhold the e-mail addresses we have marked under section 552.137.

In summary, the district: (1) may withhold the information we have marked under Texas Rule of Evidence 503; (2) must withhold the information we have marked under sections 552.130, 552.136, and 552.137 of the Government Code; and (3) must release the remainder of the submitted information to the requestors.

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](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,



Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/jb

Ref: ID# 341613

Enc. Submitted documents

cc: 2 Requestors  
(w/o enclosures)