



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 25, 2009

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

OR2009-08796

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# 347203 (040109-R242/DL 3695, 040109-R243/DL 3696, 040109-R246/DL 3699, 040109-R248/DL 3701, and 040109-R249/DL 3702).

The Lake Travis Independent School District (the "district") received five requests from the same requestor for the following: (1) information pertaining to a donation of artificial turf by Triton Financial, L.L.C. ("Triton"); (2) property owned, leased, or donated in the "Canyon of Sweetwater" development; (3) attorney's fee bills for a specified period; (4) public information requests submitted to the district, excluding those submitted by the requestor, for a specified period; and (5) information regarding wireless network services, including specified telephone numbers.<sup>1</sup> You state the district has made some of the requested information available for inspection. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.105, 552.107, 552.117 of the Government Code, and privileged pursuant to Texas Rules of Evidence 503. You also state that release of a portion of the submitted information may implicate the proprietary interests

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<sup>1</sup>The requestor states that he excludes personal e-mail addresses subject to section 552.137(a) of the Government Code from his request. You state the requestor has notified the district he also excludes account numbers from his request. Accordingly, any such information within the submitted information is not responsive to the instant request for information. The district need not release nonresponsive information in response to this request, and this ruling will not address it.

of Triton and Sweetwater Austin Property, L.L.C. ("Sweetwater"). Accordingly, you state that you notified these third parties of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from Triton. We have considered the submitted arguments and reviewed the submitted information, portions of which are representative samples.<sup>2</sup>

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Sweetwater explaining why any portion of the submitted information should not be released to the requestor. Therefore, we have no basis to conclude that Sweetwater has a protected proprietary interest in its submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the district may not withhold any of the submitted information on the basis of any proprietary interest Sweetwater may have in the information.

Next, we note, and you acknowledge, that Tab G consists of attorney's fee bills subject to section 552.022(a)(16) of the Government Code. Section 552.022(a)(16) provides for required public disclosure of "information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(16). 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). Accordingly, the district may not withhold information from the submitted fee bills under section 552.107. However, the Texas Supreme Court has held that "the Texas Rules of Evidence are 'other law' within the meaning of

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<sup>2</sup>We 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.

section 552.022.” See *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex.2001). We will, therefore, consider your argument under Rule 503 of the Texas Rules of Evidence for the information within Tab G.

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

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 state that the submitted attorney fee bills contain confidential communications between identified district attorneys and district employees that were made in furtherance of the

rendition of professional legal services to the district. You indicate that these communications have remained confidential and have not been revealed to any third party. Based on your representations and our review of the submitted information, we agree that some of the information you have marked within Tab G reveals confidential communications between privileged parties. However, the remaining information you have marked does not constitute or reveal communications between privileged parties. Accordingly, we have marked the information within Tab G that constitutes attorney-client privileged communications and may, therefore, be withheld pursuant to Rule 503 of the Texas Rules of Evidence.

We now turn to your arguments regarding the information not subject to section 552.022. You assert that Tabs A, B, and C contain attorney-client communications that are excepted from disclosure under section 552.107. When asserting the attorney-client privilege under section 552.107, 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. See ORD 676 at 6-7. The elements of the privilege under section 552.107 are the same as those for Rule 503 outlined above. You state that the information in Tabs A, B, and C constitutes or documents communications between district attorneys and district officials, all of whom you have identified. You state that these communications were made in furtherance of the rendition of legal services to the district, and you indicate that these communications have remained confidential. Based on your representations and our review, we agree that most of the information in Tabs A, B, and C reveals privileged attorney-client communications. However, we find that you have failed to demonstrate that one of the e-mails constitutes a communication made in furtherance of the rendition of legal services to the district. Thus, this e-mail, which we have marked for release, is not privileged and may not be withheld under section 552.107. Accordingly, with the exception of the e-mail we have marked for release, the district may withhold Tabs A, B, and C under section 552.107 of the Government Code.

You assert that the information you have marked in Tab I is protected by common-law privacy. In addition, Triton asserts that a portion of the information in Tab D consists of the personal financial information of an employee that is protected by common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that the following types of information are excepted from required

public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990).

Upon review, we find that the information we have marked in Tab D constitutes personal financial information that is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district must withhold the information we have marked in Tab D pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The district has failed to demonstrate, however, how the information it has marked in Tab I is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district may not withhold any portion of the information in Tab I under section 552.101 in conjunction with common-law privacy.

Section 552.105 of the Government Code excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. *See* Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information that is excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted from disclosure so long as the transaction relating to that information is not complete. *See* ORD 310. But the protection offered by section 552.105 is not limited solely to transactions not yet finalized. This office has concluded that information about specific parcels of land obtained in advance of other parcels to be acquired for the same project could be withheld where release of the information would harm the governmental body's negotiating position with respect to the remaining parcels. *See* ORD 564 at 2. A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" ORD 357 at 3 (quoting Open Records Decision No. 222 (1979)). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiating position with regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body's good-faith determination in this regard, unless the contrary is clearly shown as a matter of law. *See* ORD 564.

You state that the information in Tab E pertains to the location, appraisal, or purchase price of real property that the district intends to purchase. Further, you explain that the release of this information may impair the district's negotiating position with respect to the transaction at issue. Based on your representations and our review, we conclude that the district may withhold Tab E under section 552.105 of the Government Code.

You assert that the telephone numbers you have marked within Tab J are subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Gov't Code § 552.117. Additionally, section 552.117 encompasses personal cellular telephone numbers, provided that the cellular telephone phone service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117(a)(1) exception to personal cellular telephone phone number and personal pager number of employee who elects to withhold home telephone phone number in accordance with section 552.024). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received. *See* Open Records Decision No. 530 at 5 (1989). You state that the home and personal cellular telephone numbers you have marked within Tab J pertain to district employees who timely requested this information be made confidential pursuant to section 552.024. You indicate that the personal cellular numbers you have marked pertain to telephone service paid for by the employees at issue with their own funds. Based upon your representations, we agree that the information you marked within Tab J must be withheld under section 552.117(a)(1).

In summary, the district may withhold the information we have marked in Tab G pursuant to Texas Rules of Evidence 503. With the exception of the e-mail we have marked for release, the district may withhold Tabs A, B, and C under section 552.107 of the Government Code. The district must withhold the information we have marked in Tab D under section 552.101 of the Government Code in conjunction with common-law privacy. The district may withhold Tab E under section 552.105 of the Government Code. The district must withhold the information you have marked in Tab J under section 552.117 of the Government Code. The remaining 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](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/dls

Ref: ID# 347203

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

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