



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2009

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

OR2009-10288

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# 350118 (050409-R376/DL 3833, 050409-R379/DL 3836, 050409-R386/DL 3843).

The Lake Travis Independent School District (the "district") received three requests from the same requestor for information pertaining to (1) all legal expenses received or paid by the district during April of 2009, (2) any district cellular phone expenses paid during April 2009, and (3) any resignations and terminations of any district employees and contractors during April 2009. You state you are releasing and making available for inspection some of the requested information. You state you have redacted a social security number pursuant to section 552.147 of the Government Code.¹ You claim that the remaining information is excepted from disclosure under sections 552.103, 552.107, 552.117, and 552.136 of the Government Code, and privileged pursuant to Texas Rule of Evidence 503.² We have considered the submitted arguments and reviewed the submitted information.

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

²Although you also raise section 552.111 of the Government Code, you have submitted no arguments in support of the applicability of this exception to disclosure. Therefore, we assume you no longer claim section 552.111. See Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments stating reasons why claimed exceptions to disclosure apply).

We note, and you acknowledge, that Tab 1 consists of attorney's fee bills, which are 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 sections 552.103 and 552.107 of the Government Code. Sections 552.103 and 552.107 are discretionary exceptions under the Act and do not constitute "other law" for purposes of section 552.022. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 460 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); 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 the submitted fee bills under section 552.103 or section 552.107. However, 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). We will, therefore, consider your attorney-client privilege argument under Rule 503 of the Texas Rules of Evidence for the information within Tab 1.

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 claim that the fee bills, in their entirety, are confidential 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* ORD Nos. 676 (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 attorney fee bills consist of 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 were intended to be and have remained confidential. Based on your representations and our review of the submitted information, we agree that some of the information within Tab 1 reveals confidential communications between privileged parties. However, we find that you have failed to demonstrate that the remaining information at issue consists of communications between privileged parties. Accordingly, we have marked the information within Tab 1 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. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, 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 of the Government Code. Gov’t Code § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld 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 state that the former employees whose information you have marked elected to keep their information confidential prior to the date the district received the request. Thus, the district must withhold the information you have marked in Tab 4 under section 552.117(a)(1).

You contend that some of the information within Tab 5 is excepted from public disclosure under section 552.136 of the Government Code. Section 552.136 provides that “[n]otwithstanding any other provision of this chapter, 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.” Gov’t Code § 552.136. An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). Thus, the district must withhold the account and routing numbers you have marked, and the additional account number we have marked, under section 552.136 of the Government Code.

In summary, the district may withhold the information we have marked in Tab 1 under Rule 503 of the Texas Rules of Evidence. The district must withhold the information you have marked in Tab 4 under section 552.117(a)(1) of the Government Code. The district must withhold the account and routing numbers you have marked in Tab 5, and the additional account number we have marked, under section 552.136 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, 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 350118

Enc. Submitted documents

cc: Requestor
(w/o enclosures)
