



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2009

Ms. LeAnne Lundy
Feldman Rodgers, L.L.P.
Attorney for Alief Independent School District
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2009-11365

Dear Ms. Lundy:

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# 352204.

The Alief Independent School District (the "district"), which you represent, received a request for (1) all recorded board minutes from January 2007 to February 2009, (2) the total itemized dollar amount spent on the prosecution of a specified board trustee, and (3) board minutes for May 19, 2009. You state that the district will release some information. You also state that you have redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim that portions of the submitted information are excepted from

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student 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 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>.

disclosure under rule 503 of the Texas Rules of Evidence.² We have considered your arguments and reviewed the submitted information.

The submitted information consists of attorney fee bills. As you acknowledge, attorney fee bills are 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). You assert that the information you have marked within the submitted attorney fee bills is privileged under the attorney-client privilege of rule 503 of the Texas Rules of Evidence. 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). Therefore, we will consider your arguments under rule 503, which provides in relevant part:

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).

²You also purport to raise sections 552.022 and 552.101 of the Government Code as exceptions against disclosure. We note that section 552.022 acts to make certain information public, and is not an exception against disclosure. We also note that section 552.101, which you raise in conjunction with rule 503, does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

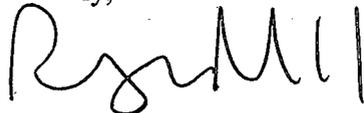
Thus, in order to withhold information from disclosure under rule 503, a governmental body must: (1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that the 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 state that the information you have marked under rule 503 reveals confidential communications between and among district employees and attorneys for the district. You represent that these communications were “made for the purpose of facilitating the rendition of professional legal services to [the district].” You have identified most of the parties involved in these communications. You also state that “[t]hese communications were not intended to be disclosed to third parties.” Based on these representations and our review of the submitted information, we agree that the district may withhold the information you have marked under rule 503 of the Texas Rules of Evidence, except the information we have marked for release, which does not involve communications with identified parties. As you raise no further exceptions against disclosure, the district must release the remainder of the submitted information.

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 352204

Enc. Submitted documents

cc: Requestor
(w/o enclosures)