



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2009

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

OR2009-15116

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# 359207.

The Lake Travis Independent School District (the "district") received six requests for (1) billing statements, invoices, or receipts for the district for legal service during July 2009; (2) documents regarding resignations and terminations, including non-renewal of contracts, of district employees and contractors during July 2009; (3) invoices and payments between the district and Creative Digital Productions during a specified time period; (4) information relating to complaints filed by a named individual; (5) any contracts, invoices, and payments made by the district to a specified company during a specified time period; and (6) any contracts, invoices, and payments made by the district to another specified company during a specified time period. You state you have released some of the requested information. You state some of the submitted information has been redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim that the submitted information is excepted from disclosure under

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA 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>.

sections 552.107, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the district has not submitted any information responsive to item six. To the extent information responsive to item six existed on the date the district received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code § § 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note that the submitted attorney's fee bills in Tab 2 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). Although you seek to withhold the information at issue in Tab 2 under section 552.107 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *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). As such, section 552.107 is not "other law" that makes information confidential for the purposes of section 552.022(a)(16), and the district may not withhold any of the information in Tab 2 under that exception. The Texas Supreme Court has held, however, 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 address your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the information in Tab 2.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) provides as follows:

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 submitted fee bills are confidential in their 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).

You state the information within the submitted attorney fee bills reveals confidential communications with parties you identified as the district’s outside counsel, officials, and staff. You also state these communications were made for the purpose of facilitating the rendition of professional legal services to the district. Based on your representations and our review, we conclude the information we marked may be withheld under Texas Rule of Evidence 503. However, you have failed to demonstrate the remaining information in Tab 2 reveals communications between privileged parties. *See* ORD No. 676. Thus, the remaining information in Tab 2 is not privileged under rule 503.

Section 552.117(a)(1) 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 of the Government Code. *See* Gov't Code § 552.117. Whether a particular piece of information is protected by 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). You raise section 552.117(a)(1) for the information you have marked in Tab 4. You inform us that the employees at issue timely elected confidentiality under section 552.024. We note, however, that some of the information you have marked does not consist of a home address or telephone number, social security number, or family member information; therefore, the district may not withhold this information, which we have marked, under section 552.117(a)(1). Therefore, with the exception of the information we have marked for release, we agree the district must withhold the information you have marked under section 552.117(a)(1) of the Government Code.

Section 552.136 states 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. *Id.* The district must withhold the bank account and routing numbers you have marked under section 552.136 of the Government Code.

You claim a portion of the remaining information is excepted under section 552.137 of the Government Code, which 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. We note that an e-mail address “provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public” is specifically excluded from the confidentiality provisions of section 552.137(a) by section 552.137(c)(4). *Id.* § 552.137(c)(4). The e-mail address you have marked is contained on a letterhead. Therefore, the district may not withhold the e-mail address under section 552.137 of the Government Code.

In summary, the district may withhold the information we have marked under Texas Rule of Evidence 503. With the exception of the information we have marked, the district must withhold the information you have marked under section 552.117(a)(1) of the Government Code. The district must withhold the information you 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, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID# 359207

Enc. Submitted documents

c: Requestor
(w/o enclosures)