



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 22, 2010

Dr. John J. Janssen  
Staff Attorney  
Office of Legal Services  
Corpus Christi Independent School District  
P.O. Box 110  
Corpus Christi, Texas 78403-0110

OR2010-01047

Dear Dr. Janssen:

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# 367831.

The Corpus Christi Independent School District (the "district") received a request for all documents pertaining to a specified investigation. You claim the submitted investigation report is excepted from disclosure under section 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022(a)(1) of the Government Code, which provides:

the following categories of information are public information and not excepted from required disclosure under [the Act] unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

---

<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with rule 1.05 of the Texas Disciplinary Rules of Professional Conduct and the attorney-client privilege found in rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990), 574 at 4 (1990).

Gov't Code § 552.022(a)(1). The submitted investigation report details a completed investigation. Completed investigations must be released under section 552.022(a)(1), unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. Section 552.107 of the Government Code is a discretionary exception to public disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; 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, this section does not make information confidential for the purposes of section 552.022. Therefore, the district may not withhold the submitted investigation report under section 552.107 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). You also assert the submitted investigation report is privileged under rule 503 of the Texas Rules of Evidence. Accordingly, we will consider your assertion of the attorney-client privilege under rule 503 for the submitted information.

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 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 the communication is confidential by explaining it was not intended to be disclosed to third persons and 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 the submitted investigation report consists of a communication between an attorney for the district and a district administrator that was made for the purpose of facilitating the rendition of professional legal services to the district. You also state the communication was made in confidence, and that confidentiality has been maintained. Based on your representations and our review, we agree the submitted investigation report constitutes a privileged attorney-client communication. Therefore, the district may withhold the submitted investigation report under Texas Rule of Evidence 503.

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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 367831

Enc. Submitted documents

c: Requestor  
(w/o enclosures)