



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2012

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

OR2012-06014

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# 451725.

The Lake Travis Independent School District (the "district") received three requests for the following information from January 2012 1) all billing statements, invoices and receipts for legal expenses of the district, 2) all employee exit interview documents, and 3) documents regarding resignations and terminations of any district employees or contractors. You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code and privileged under Rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

Initially, we note that Tab 2 consists of attorney 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 confidential under this chapter or "other law." Gov't Code § 552.022(a)(16). Although you seek to withhold Tab 2 under section 552.107 of the Government Code, this exception 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, this exception does not make 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 section 552.107 of the Government Code. 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 attorney-client privilege claim under Rule 503 of the Texas Rules of Evidence.

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 the submitted fee bills in Tab 2 are confidential in their entirety. However, section 552.022(a)(16) of the Government Code provides “information that is *in* a bill for

attorney's fees" is not excepted from required disclosure unless it is confidential under the Act, "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 (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).

Alternatively, you assert that each of the substantive billing entries in the fee bills, which you have marked, are privileged under Rule 503. You state the information within the submitted attorney fee bills reveals confidential communications with privileged parties, most of whom 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 676. Thus, the remaining information in Tab 2 is not privileged under Rule 503.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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). This office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Additionally, this office has found personal financial information that does not relate to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). You state that the information you have marked in Tab 4 pertains to the decision of a former district employee regarding whether to purchase insurance under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"). You further state the district does not contribute to COBRA coverage for former employees. Upon review, we agree some of the information at issue constitutes personal financial information not relating to a transaction between an individual and a governmental body. Thus, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-

law privacy. Additionally, we find the information we have marked in Tab 5 is medical information for which there is no legitimate public interest. The district must withhold this information under section 552.101 in conjunction with common-law privacy. The remaining information in Tabs 4 and 5 does not constitute highly intimate or embarrassing information of no legitimate public concern. Thus, none of the remaining information at issue may be withheld under section 552.101.

In summary, the district may withhold the information we marked in Tab 2 under Texas Rule of Evidence 503. The district must withhold the information we have marked in Tabs 4 and 5 under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/som

Ref: ID# 451725

Enc. Submitted documents

c: Requestor
(w/o enclosures)