



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2013

Ms. Ellen H. Spalding
Counsel for the Eanes Independent School District
Rogers, Morris & Grover, LLP
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2013-05127

Dear Ms. Spalding:

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# 483348 (EISD# 3427).

The Eanes Independent School District (the "district"), which you represent, received a request for statements from attorneys for the district with respect to charges related to a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence and under section 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the district did not fully comply with section 552.301 of the Government Code. Section 552.301(b) requires a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business-day after the date of receiving the written request." Gov't Code § 552.301(b). You state the district received the request for information on January 28, 2013. You do not inform us the district was closed for any

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

business days between January 28, 2013, and February 11, 2013. Therefore, the district was required to submit its request for decision, stating the exceptions that apply, by February 11, 2013. Although the district raised sections 552.101 and 552.103 of the Government Code within the ten-business-day time period as required by subsection 552.301(b), the district did not raise the attorney-client privilege under rule 503 of the Texas Rules of Evidence until after the ten-business-day deadline had passed. 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 does not encompass rule 503 of the Texas Rules of Evidence because rule 503 is not constitutional law, statutory law, or a judicial decision. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Thus, your claim under rule 503 was not made timely by your original claim under section 552.101 of the Government Code. Consequently, we find the district failed to comply with the ten business day deadline under section 552.301(b) with respect to your claim under rule 503 of the Texas Rules of Evidence.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. The attorney-client privilege under rule 503 is discretionary in nature. It serves to protect a governmental body’s interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* ORDs 676 (claim of attorney-client privilege under rule 503 does not provide compelling reason to withhold information under section 552.302), 630 at 4 (governmental body may waive attorney-client privilege); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under rule 503 of the Texas Rules of Evidence. However, we will consider your timely-raised exception under section 552.103 for the submitted information.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

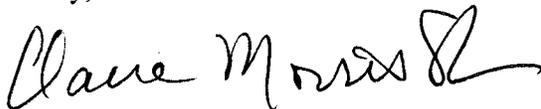
(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(16). The submitted information consists of attorney fee bills that are subject to subsection 552.022(a)(16). This information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the submitted information under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* ORDs 665 at 2 n.5, 663 at 5. Therefore, the submitted information may not be withheld under section 552.103 of the Government Code. Accordingly, the district must release the submitted information in its entirety.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 483348

Enc. Submitted documents

c: Requestor
(w/o enclosures)