



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 30, 2013

Ms. Terri O'Neal Ford  
Public Information Officer  
Tarrant County College District  
1500 Houston Street  
Fort Worth, Texas 76102-6524

OR2013-18841

Dear Ms. Ford:

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# 503995.

The Tarrant County College District (the "district"), which you represent, received a request for 1) copies of contracts between the district and five named individuals or entities, 2) information pertaining to the bidding process related to any such contracts, 3) copies of any audits or evaluations pertaining to any such contracts, 4) information pertaining to payments made by the district to five named individuals or entities from January 1, 2007 to the present, 5) copies of all correspondence related to the contracts requested in category one of the instant request, 6) copies of all correspondence from January 1, 2007 to the present between the district and a named state senator, her staff members, or another named individual, and 7) copies of all correspondence from January 1, 2007 to the present between the district and three specified entities. You claim the submitted information, responsive to categories four, five, six, and seven of the request, is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.<sup>1</sup>

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<sup>1</sup>Because you seek only a ruling on the information responsive to categories four, five, six, and seven of the instant request, we assume the remaining requested information has been released to the extent it existed as of the date the request was received. See Gov't Code §§ 552.301, .302.

Initially, you argue some of the submitted information does not consist of public information subject to the Act. The Act is applicable only to "public information." See Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002. Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You inform us the information you have submitted as Exhibit E is not subject to the Act because it is purely personal in nature and does not contain information related to the transaction of official business of the district. After reviewing the information at issue, we agree the information in Exhibit E does not constitute "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the district. See Gov't Code § 552.021; see also Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Exhibit E is not subject to the Act and the district is not required to release it in response to this request.<sup>2</sup>

The submitted attorney fee bills are subject to section 552.022(a)(16) of the Government Code, which provides for the 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

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information is expressly confidential under the Act or other law. Gov't Code § 552.022(a)(16). Although the district seeks to withhold information contained in the attorney fee bills under sections 552.103 and 552.107 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *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 section 552.103); Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (discretionary exceptions generally). As such, sections 552.103 and 552.107 do not make information confidential under the Act for purposes of section 552.022(a)(16). Therefore, the district may not withhold the information in Exhibit B or D under either section 552.103 or 552.107. However, the Texas Supreme Court has held the Texas Rules of Evidence are other laws within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). The attorney-client privilege is found at Texas Rule of Evidence 503. Accordingly, we will consider the district's assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the information in the attorney fee bills.

Texas Rule of Evidence 503 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 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 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).

The district states the attorney fee bills document communications between the district and its attorneys that were made in connection with the rendition of professional legal services to the district. The district also states the communications were intended to be confidential. Based on these representations and our review of the information, we have marked the information the district may withhold under rule 503. However, the remaining information does not document privileged communications and must be released to the requestor.

In summary, the information submitted as Exhibit E is not subject to the Act and need not be released. We have marked the information the district may withhold under rule 503 of the Texas Rules of Evidence. 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/sdk

Ref: ID# 503995

Enc. Submitted documents

c: Requestor  
(w/o enclosures)