



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2014

Mr. Dan Junell
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River
Austin, Texas 78701-2698

OR2014-14555

Dear Mr. Junell:

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# 531700.

The Teacher Retirement System of Texas (the "system") received a request for all invoices and invoice summaries submitted to the system for outside-counsel contracts with three specified firms during a specified period.¹ You state the system has no information responsive to a portion of the request.² You state the system will redact portions of the information subject to section 552.117(a)(1) of the Government Code.³ You claim the

¹You state the system sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); *Open Records Decision Nos. 605 at 2* (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

³Section 552.117(a)(1) of the Government Code exempts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. Gov't Code § 552.117(a)(1). Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee of official to whom the information pertains timely chooses not to allow public access to the information. *See id.* § 552.024(c)(2).

submitted information is excepted from disclosure in its entirety under Texas Rule of Evidence 503, and that portions of the submitted information are excepted from disclosure under section 552.107 of the Government Code. You have also highlighted certain portions of the submitted information that you assert are privileged under Texas Rule of Evidence 503.⁴ Additionally, you state the requested information may implicate the interests of the Office of the Attorney General (the "OAG"). Accordingly, you notified the OAG of the request and of its right to submit comments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.⁵

Initially, we understand you marked portions of the submitted information as non-responsive to the request for information because such information pertains to law firms that are not one of the three law firms specified in the instant request. Upon review, we agree this information is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request and the system is not required to release such information in response to this request.

Next, we note, and you acknowledge, portions of the submitted information are 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:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body [and]

...

⁴Although you raise Texas Rule of Evidence 503 for a portion of the submitted information, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107(1) of the Government Code. *See* Open Records Decision No. 676 at 1-2 (2002).

⁵We 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 that those records contain substantially different types of information than that submitted to this office.

(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)(3), (16). Some of the submitted information consists of information in an account, voucher, or contract that is subject to section 552.022(a)(3) and attorney-fee bills that are subject to section 552.022(a)(16). This information must be released unless it is made confidential under the Act or other law. *See id.* Although you seek to withhold some of the information at issue under section 552.107 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See* 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 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the information at issue may not be withheld 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. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the information subject to section 552.022.

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 it is 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). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You assert the information subject to section 552.022 comprises confidential communications between the system and system legal support staff, outside counsel for the system and their legal support staff, and attorneys for the OAG and OAG legal support staff. You state these communications were made for the purpose of facilitating the rendition of professional legal services to the system and the system has not waived the attorney-client privilege in its employ of the outside counsel or in disclosing certain information to the OAG. Based on your representations and our review, we find the system has established portions of the information at issue, which we have marked, constitute privileged attorney-client communications under rule 503. Thus, the system may withhold the information we have marked pursuant to Texas Rule of Evidence 503. However, we find the remaining information you have marked either documents communications with individuals you have not demonstrated are privileged parties or you have not demonstrated the information consists of a privileged communication. Accordingly, the remaining information subject to section 552.022 may not be withheld under Texas Rule of Evidence 503.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Gov't Code § 552.107(1). The elements of the privilege under section 552.107(1) are the same as those discussed above for rule 503. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. ORD 676 at 6-7. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie*, 922 S.W.2d at 923.

You assert the information not subject to section 552.022 comprises confidential communications between the system and system legal support staff, outside counsel for the system and their legal support staff, and attorneys for the OAG and OAG legal support staff. However, upon review, we find none of the remaining information not subject to section 552.022 consists of privileged attorney-client communications and thus, it may not be withheld under section 552.107 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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

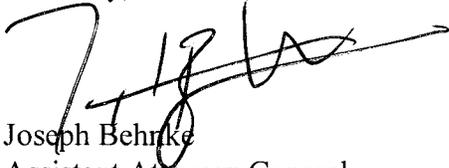
§ 552.136(b); *see id.* § 552.136(a) (defining “access device”). Thus, the system must withhold the information we have marked under section 552.136 of the Government Code. However, no portion of the remaining information constitutes information subject to section 552.136. Accordingly, no portion of the remaining information may be withheld on that basis.

In summary, the system may withhold the information we have marked pursuant to Texas Rule of Evidence 503. The system must withhold the information we have marked under section 552.136 of the Government Code. The remaining submitted 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, 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,



Joseph Behrke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 531700

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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