ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2014

Mr. Darin Darby
Counsel for Fort Worth Independent School District
Escamilla & Poneck, LLP
700 North St. Mary's Street, Suite 850
San Antonio, Texas 78205

OR2014-14715

Dear Mr. Darby:

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# 534136.

The Fort Worth Independent School District (the "district"), which you represent, received a request for itemized legal fees related to the investigation and prosecution of a named individual during a specified time period. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of certain third parties. Accordingly, you notified Walsh, Anderson, Brown, Gallegos, and Green, PC; Cantey Hanger, LLP; Brown, Garsek & Simon, LLP; Hallett & Perrin, PC; Vincent, Lopez, Serafino & Jenevein, PC; and Fanning, Harper, Martinson, Brandt & Kutchin, PC of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted representative sample of information.[1]

[1]We assume that 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.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any third party. Thus, we have no basis to conclude any third party has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the district may not withhold any of the submitted information on the basis of any proprietary interest any third party may have in the information.

We note Exhibit D 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). Exhibit D consists of attorney fee bills subject to subsection 552.022(a)(16). The district must release Exhibit D unless it is made confidential under the Act or other law. *See id.* Although you seek to withhold the submitted attorney fee bills under section 552.107, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 6 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n. 5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold Exhibit D under section 552.107 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information expressly confidential for the purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will consider your assertion of the attorney-client privilege for Exhibit D under Texas Rule of Evidence 503.

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 Exhibit D includes privileged attorney-client communications between the district's counsel and the district in its capacity as a client. You state the communications at issue were made for the purpose of the rendition of legal services to the district. You further state the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on your representations and our review of the information at issue, we find the information we have marked under rule 503 constitutes attorney-client communications. Thus, the district may withhold the information we have marked pursuant

to rule 503 of the Texas Rules of Evidence. However, the remaining information at issue either does not reveal communications for purposes of rule 503 or documents communications with individuals you have not identified as privileged. Accordingly, we find you have failed to demonstrate the applicability of the attorney-client privilege to the remaining information at issue, and the district may not withhold it under rule 503.

In summary, the district may withhold the information we have marked pursuant to rule 503 of the Texas Rules of Evidence. The district must release the remaining information.

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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 534136

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Walsh, Anderson, Brown, Gallegos and Green, PC
P.O. Box 2156
Austin, Texas 78768
(w/o enclosures)

Cantey Hanger, LLP
600 West Sixth Street, Suite 300
Fort Worth, Texas 76102
(w/o enclosures)

Barlow, Garsek & Simon, LLP
920 Foch Street
Fort Worth, Texas 76107
(w/o enclosures)

Hallett & Perrin, PC
2001 Bryan Street, Suite 3900
Dallas, Texas 75201
(w/o enclosures)

Vincent, Lopez, Serafino & Jenevein, PC
1601 Elm Street, Suite 4100
Dallas, Texas 75201
(w/o enclosures)

Fanning, Harper, Martinson, Brandt & Kutchin, PC
4849 Greenville Avenue, Suite 1300
Dallas, Texas 75206
(w/o enclosures)