



January 15, 2015

Ms. Elisabeth D. Nelson  
Counsel for Carrollton-Farmers Branch Independent School District  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2015-00836

Dear Ms. Nelson:

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# 551474.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for information related to legal fees paid to outside counsel for handling of open records requests during a specified time period. You state the district will release some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the submitted information, which you have marked, is not responsive to the instant request for information because it does not pertain to the handling of open records requests. This ruling does not address the public availability of any information that is not responsive to the request and the district is not required to release such information in response to this request.

Next, we note, and you acknowledge, the submitted information consists of attorney fee bills that 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 expressly confidential under the Act or other law. Gov't Code § 552.022(a)(16). You raise section 552.107(1) of the Government Code for some of the submitted information.

However, section 552.107(1) is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, the district may not withhold any portion of the submitted fee bills under section 552.107(1). 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). Accordingly, we will address your claim of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the submitted attorney fee bills.

Texas Rule of Evidence 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 portions of the submitted fee bills you have marked should be withheld under rule 503. You argue the submitted fee bills include privileged attorney-client communications between the district's attorneys and district officials and staff in their capacities as clients. 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 district has established the information you have marked constitutes attorney-client communications under rule 503. Thus, the district may withhold the information you marked within the submitted attorney fee bills pursuant to rule 503 of the Texas Rules of Evidence. The district must release the remaining responsive 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 551474

Enc. Submitted documents

c: Requestor  
(w/o enclosures)