



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 17, 2015

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

OR2015-05119

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# 556501.

The Fort Worth Independent School District (the "district"), which you represent, received a request for 1) amounts of money paid by the district to outside law firms for services related to the investigation, suspension, and termination of a named employee during a specified time period; 2) invoices, receipts, and communications pertaining to billing, as well as identification of the accounts or funds for each payment to outside law firms in these matters; 3) information regarding any special fund or liability insurance established by the district for paying legal fees and damages in these matters; and 4) any Board of Trustees or district administration actions or orders establishing any such special fund or liability insurance. You state some information has been made available to the requestor. You claim 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. Additionally, you state release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified the third parties of the request and of their right to submit arguments to this office

as to why the submitted information should not be released.<sup>1</sup> *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.<sup>2</sup>

Initially, we note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-14715 (2014). In that ruling, we held the district may withhold the information we marked under rule 503 of the Texas Rules of Evidence and must release the remaining information. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the submitted information is identical to the information previously submitted and ruled on by this office, we conclude the district may continue to rely on Open Records Letter No. 2014-14715 as a previous determination and withhold the information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the submitted information is not subject to Open Records Letter No. 2014-14715, we will address the district's arguments against release of the submitted information.

Next, we note 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

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<sup>1</sup>The notified third parties are Cantey Hanger, L.L.P.; Barlow, Garsek & Simon, L.L.P.; Fanning, Harper, Martinson, Brandt, and Kutchin, P.C.; Hallett & Perrin, P.C.; Linebarger, Groggan, Blair and Sampson, P.C.; Jason C. N. Smith; TASB Risk Management Fund; The Art Brender Law Firm; Vincent, Lopez, Serafino & Jenevein; and Walsh, Anderson, Gallegos and Green, P.C.

<sup>2</sup>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.

district may not withhold any of the submitted information on the basis of any proprietary interest any third party may have in the information.

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 subject to subsection 552.022(a)(16). The district must release the submitted information 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 the submitted information 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*, 53S. W.3d 328, 336 (Tex. 2001). Thus, we will consider your assertion of the attorney-client privilege for the submitted information 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, orig. proceeding).

You assert the submitted information 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 is not a communication 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, to the extent the submitted information is identical to the information previously submitted and ruled on by this office, we conclude the district may continue to rely on Open Records Letter No. 2014-14715 as a previous determination and withhold the information in accordance with that ruling. 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](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,



Kristi L. Godden  
Assistant Attorney General  
Open Records Division

KLK/cz

Ref: ID# 556501

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Cantey Hanger, LLP  
600 West 6<sup>th</sup> Street, Suite 300  
Fort Worth, Texas 76102  
(w/o enclosures)

Linebarger, Grogan, Blair and Sampson, P.C.  
100 Throckmorton, Suite 300  
Fort Worth, Texas 76102  
(w/o enclosures)

The Art Brender Law Firm  
600 8<sup>th</sup> Avenue  
Fort Worth, Texas 76104  
(w/o enclosures)

Jason C.N. Smith  
600 8<sup>th</sup> Avenue  
Fort Worth, Texas 76104  
(w/o enclosures)

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

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

TASB Risk Management Fund  
P.O. Box 975111  
Dallas, Texas 75397-5111  
(w/o enclosures)

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

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

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