



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 13, 2015

Ms. Susan K. Bohn  
Assistant Superintendent & General Counsel  
Central Administration  
Lake Travis Independent School District  
3322 Ranch Road 620 South  
Austin, Texas 78738

OR2015-07027

Dear Ms. Bohn:

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# 559793.

The Lake Travis Independent School District (the "district") received a request for all billing statements, invoices, and receipts for legal expenses received and/or paid by the district in December 2014. The district states it has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.<sup>1</sup> See Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). The district claims 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 district's arguments and reviewed the submitted information.

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

The submitted information consists of attorney fee bills 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 “other law.” Gov’t Code § 552.022(a)(16). The district seeks to withhold the information at issue under section 552.107 of the Government Code. However, this exception does not make information confidential. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the district may not withhold any of the submitted information under section 552.107 of the Government Code. Nonetheless, the Texas Supreme Court has held the Texas Rules of Evidence are “other law” that make information confidential under section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will consider the district’s assertion of rule 503 of the Texas Rules of Evidence for the submitted information.

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). The district states the information at issue constitutes communications between the district and its outside counsel. The district states these communications were made for the purpose of facilitating the rendition of professional legal services to the district, and that these communications were intended to be confidential and have remained confidential. Based on these representations and our review, we find the information we have marked falls within the protection of the attorney-client privilege, and therefore, the district may withhold that information under rule 503 of the Texas Rules of Evidence. However, the district has not demonstrated any of the remaining information falls within the attorney-client privilege. Accordingly, the district may not withhold any of the remaining information on that basis. As the district raises no further exceptions against disclosure, 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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/dls

Ref: ID# 559793

Enc. Submitted documents

c: Requestor  
(w/o enclosures)