



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 22, 2015

Mr. Lewis L. Isaacks  
Counsel for the Collin Central Appraisal District  
Gay, McCall, Isaacks, Gordon & Roberts  
777 East 15th Street  
Plano, Texas 75074

OR2015-10045

Dear Mr. Isaacks:

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# 564753.

The Collin Central Appraisal District (the "district"), which you represent, received a request for all documents which reference a specified organization. You state the district has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note the submitted information contains a court-filed document subject to section 552.022(a)(17) of the Government Code. Section 552.022(a) provides, in relevant part:

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<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

(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:

...

(17) information that is also contained in a public court record[.]

*Id.* § 552.022(a)(17). The district must release the information subject to section 552.022(a)(17) unless it is made confidential under the Act or other law. *See id.* Although you seek to withhold the court-filed document under section 552.107(1) of the Government Code, 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 (Gov't Code § 552.107(1) is not other law for purposes of Gov't Code § 552.022), 665 at 2 n.5 (2000) (discretionary exceptions generally).* Therefore, the district may not withhold the court-filed document under section 552.107(1) of the Government Code. The Texas Supreme Court has held, however, that the Texas Rules of Evidence are "other law" that make information expressly confidential for purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will address your claim under Texas Rule of Evidence 503 for the court-filed document. We will also consider your arguments against disclosure of the remaining information not subject to section 552.022.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client's representative and the client's lawyer or the lawyer's representative;

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

Tex. R. Evid. 503(b)(1). A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is made to further the rendition of professional legal services to the client or reasonably necessary to transmit the communication. *Id.* 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must 1) show that 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 that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. *See* ORD 676. Upon a demonstration of all three factors, the entire communication is confidential under rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in Rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You assert the submitted court-filed document is an attachment to a confidential communication between attorneys for the district and district employees. You state the communication was made in confidence for the purpose of facilitating the rendition of professional legal services and this communication has remained confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Thus, the district may withhold the court-filed document under rule 503 of the Texas Rules of Evidence.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. The elements of the privilege under section 552.107(1) are the same as those discussed 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. *See* 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 920, 923.

You state the remaining information consists of communications involving attorneys for the district and district employees, representatives, and officials. You state the communications were made for the purpose of facilitating the rendition of professional legal services to the district and these communications have remained confidential. Upon review, we find you have demonstrated the applicability of the attorney-client privilege to the remaining information. Therefore, the district may generally withhold the remaining information under section 552.107(1) of the Government Code. However, we note some of these e-mail strings

include e-mails and attachments received from or sent to a non-privileged party. Furthermore, if these e-mails and attachments are removed from the e-mail strings and stand alone, they are responsive to the request for information. Therefore, if the district maintains these non-privileged e-mails and attachments, which we have marked, separate and apart from the otherwise privileged e-mail strings in which they appear, then the district may not withhold these non-privileged e-mails and attachments under section 552.107(1) of the Government Code.

We note portions of the non-privileged e-mails are subject to section 552.137 of the Government Code.<sup>2</sup> Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail addresses we have marked are not of the types specifically excluded by section 552.137(c). Accordingly, the district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release.

In summary, the district may withhold the court-filed document under rule 503 of the Texas Rules of Evidence. The district may generally withhold the remaining information under section 552.107(1) of the Government Code. However, if the non-privileged e-mails and attachments we have marked are maintained by the district separate and apart from the otherwise privileged e-mail strings in which they appear, then the district may not withhold them under section 552.107(1) of the Government Code. In that case, the district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release, and the district must release the remaining information.<sup>3</sup>

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note the requestor has a right of access to his own personal e-mail addresses in the information that is being released to him. *See* Gov’t Code § 552.137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure). We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Thus, if the district receives another request for this same information from a person who does not have such a right of access, Open Records Decision No. 684 authorizes the district to redact this requestor’s personal e-mail addresses without again seeking a ruling from this office.

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,

A handwritten signature in black ink, appearing to read 'Tim Neal', with a stylized, cursive script.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 564753

Enc. Submitted documents

c: Requestor  
(w/o enclosures)