



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 10, 2015

Ms. Christine Badillo  
Counsel for Manor Independent School District  
Walsh, Anderson, Gallegos, Green and Treviño, P.C.  
P.O. Box 2156  
Austin, Texas 78768-2156

OR2015-11362

Dear Ms. Badillo:

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# 566857.

The Manor Independent School District (the "district"), which you represent, received a request for (1) all invoices received from any attorney and any law firm during a specified time period, (2) all documentation evidencing payments or retainers made to any attorney and any law firm during a specified time period, (3) all documentation that evidences district funds transferred to a named individual during a specified time period, (4) all documentation that evidences use of district funds by the named individual during a specified time period, and (5) the named individual's employment contracts for six specified academic years. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code and privileged under Texas Rule of Evidence 503.<sup>1</sup> We have considered your 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. 2014-22816 (2014). In that ruling, we determined the district was required to release the

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

<sup>2</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

requested information. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the district may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code and privileged under Texas Rule of Evidence 503, these sections and this rule do not prohibit the release of information or make information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under section 552.107(1) and Texas Rule of Evidence 503 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, to the extent the district previously released any of the submitted information to a member of the public, the district may not now withhold any such information from the present requestor under section 552.103, section 552.107, or Rule 503. However, because section 552.117 of the Government Code makes information confidential under the Act, we will consider the applicability of this exception to the submitted information.<sup>3</sup> Further, to the extent the submitted information has not previously been released, we will consider your arguments against disclosure.

Next, we note, and you acknowledge, portions of the submitted information are 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:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body [and]

...

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<sup>3</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).

(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)(3), (16). Portions of the submitted information, which we have marked, consist of information in an account, voucher, or contract that is subject to section 552.022(a)(3) and attorney-fee bills that are subject to section 552.022(a)(16). This information must be released unless it is made confidential under the Act or other law. *See id.* Although you seek to withhold this information under sections 552.103 and 552.107 of the Government Code, these sections are discretionary exceptions and do not make information confidential under the Act. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76; ORDs 676 at 10-11, 665 at 2 n.5, 663 at 5. Therefore, the information subject to section 552.022 may not be withheld under section 552.103 or section 552.107 of the Government Code. 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). Therefore, we will consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the information subject to section 552.022(a)(16). Additionally, because section 552.117 of the Government Code makes information confidential under the Act, we will consider the applicability of this exception to the submitted information. Further, we will consider your argument under section 552.103 of the Government Code for the 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 claim the information you have marked, which is subject to section 552.022(a)(16), reflects attorney-client communications between the district’s attorney and district representatives. You state these communications were made for the purpose of providing professional legal advice to the district. You further state these communications were intended to be and have remained confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to portions of the information you have marked. Thus, the district may withhold the information we have marked pursuant to Texas Rule of Evidence 503. However, we find you have failed to demonstrate the applicability of the attorney-client privilege to any portion of the remaining information you have marked. Therefore, the district may not withhold any portion of the remaining information you have marked pursuant to Texas Rule of Evidence 503.

Section 552.103 of the Government Code provides in pertinent part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated

on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date of the receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

You claim the information not subject to section 552.022 is excepted from disclosure under section 552.103. You inform us, and provide documentation showing, at the time the district received the present request for information, the district was a party to ongoing litigation styled *Peters v. Manor Indep. Sch. Dist.*, Cause No. D-1-GN-14-004670, in the 53rd Judicial District Court of Travis County, Texas. You assert the information at issue is related to the claims and theories underlying this litigation. Based on your representations and our review, we find the district was a party to pending litigation when it received the present request for information. Further, we find the information at issue relates to the pending litigation. Thus, the district may withhold the information not subject to section 552.022, which we have marked, under section 552.103 of the Government Code.

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information relating to litigation through discovery procedures. *See* ORD 551 at 4-5. Thus, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.024, .117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the individuals whose information is at issue timely requested confidentiality under

section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, to the extent the individuals whose information is at issue did not timely request confidentiality under section 552.024 of the Government Code, the district may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.

In summary, the district must release any information that was previously released in Open Records Letter No. 2014-22816 pursuant to section 552.007 of the Government Code. The district may withhold the information we have marked pursuant to Texas Rule of Evidence 503. The district may withhold the information we have marked under section 552.103 of the Government Code. To the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. 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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/dls

Ref: ID# 566857

Enc. Submitted documents

c: Requestor  
(w/o enclosures)