



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 7, 2015

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

OR2015-16391

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# 574580.

The Fort Worth Independent School District (the "district"), which you represent, received a request for 1) costs paid to outside counsel and outside investigators pertaining to specified matters involving a named individual during a specified time period, 2) financial documents related to outside counsel during a specified time period, 3) any internal or external audits for outside counsel during a specified time period, 4) specified information pertaining to any outside counsel, 5) specified information pertaining to the specified legal matter, and 6) specified categories of correspondence. You state you do not have information responsive to portions of the request.<sup>1</sup> You state some information has been made available to the requestor. You claim the submitted information is excepted from disclosure under

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

section 552.107 of the Government Code and privileged under Texas Rule of Evidence 503.<sup>2</sup> We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the requested information was the subject of previous requests for rulings, as a result of which this office issued Open Records Letter Nos. 2015-05119 (2015) and 2014-14715 (2014). In Open Records Letter No. 2015-05119, we determined 1) to the extent the submitted information is identical to the information previously submitted and ruled on by this office, 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; 2) the district may withhold the marked information pursuant to rule 503 of the Texas Rules of Evidence; and 3) the district must release the remaining information. In Open Records Letter No. 2014-14715, we determined the district may withhold the marked information pursuant to rule 503 of the Texas Rules of Evidence and must release the remaining information. You state the law, facts, or circumstances on which the prior rulings were based have not changed. Thus, the district may continue to rely on Open Records Letter Nos. 2015-05119 and 2014-14715 as previous determinations and withhold or release the information at issue in accordance with those rulings. *See* Open Records Decision No. 673 (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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will consider your arguments for the submitted information not subject to the previous rulings.

Next, we note portions of the submitted information are subject to section 552.022 of the Government Code, which provides, in 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 (16). In this instance, the submitted information includes attorney fee bills, which are subject to section 552.022(a)(16). Thus, the district must release this information pursuant to section 552.022(a)(16) unless the information is confidential under

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<sup>2</sup>We note, although you also raise section 552.022 of the Government Code, section 552.022 is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are made confidential under the Act or other law. *See* Gov't Code § 552.022.

the Act or other law. *Id.* Although you seek to withhold this information under section 552.107 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the information at issue may not be withheld under this exception. 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. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, 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, we will consider your argument for the information not subject to section 552.022.

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).

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* Open Records Decision No. 676 (2002). 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 information subject to section 552.022 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, we find you have failed to demonstrate the remaining information at issue consists of privileged attorney-client communications. We note an entry stating a memorandum or an e-mail was prepared or drafted does not demonstrate the document was communicated to the client. Thus, we find you have failed to demonstrate the remaining information at issue was communicated and it does not reveal a client confidence. Accordingly, no portion of the remaining information at issue may be withheld under rule 503, and it must be released.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. *See* Gov't Code § 552.107(1). The elements of the privilege under section 552.107(1) are the same as those discussed for rule 503 above. 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* Open Records Decision No. 676 at 6-7 (2002). 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 v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information not subject to section 552.022 consists of 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, we find the

information we have marked consists of privileged attorney-client communications the district may generally withhold under section 552.107(1). However, we note some of these otherwise privileged e-mail strings include e-mails received from or sent to non-privileged parties. Furthermore, if the e-mails received from or sent to non-privileged parties are removed from the otherwise privileged e-mail strings in which they appear and stand alone, they are responsive to the requests for information. Therefore, if these non-privileged e-mails, which 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 these non-privileged e-mails under section 552.107(1) of the Government Code and must release them. Further, we find you have failed to establish how the remaining information at issue constitutes privileged attorney-client communications for the purposes of section 552.107(1). Accordingly, the district may not withhold the remaining information not subject to section 552.022 under section 552.107(1) of the Government Code.

Section 552.137 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).<sup>3</sup> See Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. See *id.* § 552.137(c). Upon review, we find the district must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or if subsection (c) applies.

In summary, the district may continue to rely on Open Records Letter Nos. 2015-05119 and 2014-14715 as previous determinations and withhold or release the information at issue in accordance with those rulings. The district may withhold the information we have marked pursuant to rule 503 of the Texas Rules of Evidence. The district may generally withhold the information we have marked under section 552.107(1) of the Government Code; however, the district may not withhold the marked non-privileged e-mails if they are maintained separate and apart from the otherwise privileged e-mail strings in which they appear. The district must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or if subsection (c) applies. The district must release the remaining information.

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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).

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 'Meredith L. Coffman', followed by a long horizontal line extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 574580

Enc. Submitted documents

c: Requestor  
(w/o enclosures)