



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2015

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue, Box 74
Dallas, Texas 75204

OR2015-19287

Dear Ms. McGowan:

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# 579241 (ORR# 14260).

The Dallas Independent School District (the "district") received a request for receipts, invoices, and other financial documents pertaining to a specified lawsuit. You state the district is releasing some information. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under Texas Rule of Evidence 503.¹ We have considered the your arguments and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. This section provides, in pertinent part:

¹Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Further, although you also raise rule 192.5 for the submitted information, you provide no arguments explaining how this rule is applicable to the information at issue. Therefore, we assume you no longer assert this rule. *See* Gov't Code §§ 552.301, .302.

(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 section 552.022(a)(16). The district must release the information subject to section 552.022 unless it is made confidential under the Act or other law. *See id.* § 552.022(a). You seek to withhold the submitted information under section 552.107 of the Government Code. However, section 552.107 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the submitted attorney fee bills may not be withheld under section 552.107 of the Government Code. However, the Texas Supreme Court has ruled the Texas Rules of Evidence are "other law" that make information confidential for the purposes of section 552.022. *See In re City of Georgetown*, 53S.W.3d 328 (Tex. 2001). Accordingly, we will address your assertions of the attorney-client privilege under Texas Rule of Evidence 503 for the submitted information.

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* 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).

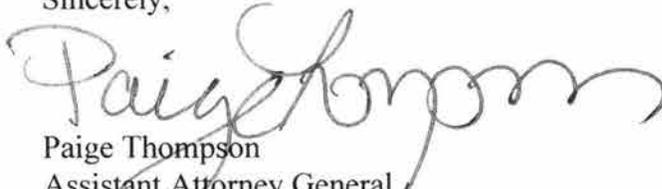
You contend the attorney-client privilege is applicable to the entirety of the submitted information. Alternatively, you seek to withhold portions of the fee bills. We note section 552.022(a)(16) provides information "that is *in* a bill for attorney's fees" is not excepted from disclosure unless the information is confidential under the Act or other law or protected by the attorney-client privilege. *See* Gov't Code § 552.022(a)(16) (emphasis added). Thus, by its express language, section 552.022(a)(16) does not permit an attorney fee bill to be withheld in its entirety. *See also* Open Records Decisions Nos. 676 (attorney fee bill cannot be withheld in its entirety on basis it contains or is attorney-client communication pursuant to language in section 552.022(a)(16)), 589 (1991) (information in attorney fee bill is excepted only to extent it reveals client confidences or attorney's legal advice). Accordingly, we will determine whether the district may withhold any of the submitted information under rule 503. You assert the submitted fee bills include attorney-client communications between privileged parties. You state the communications at issue were made for the purpose of the rendition of legal services to the district. You state the district has not waived the attorney-client privilege with regard to the communications. Upon review, we find the district may withhold the information we marked under Texas Rule of Evidence 503. However, we find some of the remaining information consists of communications with parties you have not established are privileged parties for purposes of

rule 503. Further, some of the information at issue does not document a communication. We note an entry stating a memorandum or an email 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 constitutes privileged attorney-client communications for the purposes of Texas Rule of Evidence 503. Accordingly, the remaining information may not be withheld under rule 503, and it 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, 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 579241

Enc. Submitted documents

c: Requestor
(w/o enclosures)