



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 10, 2015

Mr. Rusty Meurer  
Counsel for the Laredo Community College  
Kazen, Meurer & Pérez, L.L.P.  
211 Calle Del Norte, Suite 100  
Laredo, Texas 78041

OR2015-23624

Dear Mr. Meurer:

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# 586579.

Laredo Community College (the "college"), which you represent, received a request for a specified investigation report and all invoices and payments made by the college to a specified law firm. You claim portions of the submitted information are not responsive to the instant request for information. In addition and in the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code and privileged under Texas Rule of Evidence 503. You also state release of the submitted information may implicate the privacy interests of certain third parties. Accordingly, you state you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.<sup>1</sup> *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered your arguments and reviewed the submitted information.

Initially, you claim the information you have marked Exhibits C and F, as well as some of the information you have marked Exhibit D, are not responsive to the present request for information. We note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8

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<sup>1</sup>As of the date of this letter, we have not received any comments from any third party.

(1990). The requestor seeks, in part, a specified investigation report. Upon review, we find Exhibit D consists of the completed investigation report and attachments. Thus, we find Exhibit D is responsive to the present request. Accordingly, we will address your arguments for this information. However, we find Exhibits C and F are not part of the specified investigation report, nor do they consist of invoices or reflect payments made by the college to the specified law firm. Accordingly, we find Exhibits C and F are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the college is not required to release this information in response to this request.<sup>2</sup>

Next, we note the responsive information falls within the scope of 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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

(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)(1), (16). Exhibit D consists of a completed investigation report subject to section 552.022(a)(1). The college must release the completed report pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). Exhibit E consists of attorney fee bills subject to section 552.022(a)(16), which must be released unless they are made confidential under the Act or other law. *See id.* § 552.022(a)(16). Although you seek to withhold the information at issue under sections 552.103, 552.107, and 552.111 of the Government Code, these sections are discretionary exceptions to disclosure and do not make information confidential under the Act. *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 6 (2002) (section 552.107(1) is not other law for purposes of section 552.022), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the college may not withhold any of the information at issue under section 552.103, section 552.107, or section 552.111

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<sup>2</sup>As our ruling is dispositive for this information, we do not address your arguments to withhold it.

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 of the attorney-client privilege under Texas Rule of Evidence 503. You also claim Exhibit E is excepted from disclosure under section 552.101 of the Government Code. As this section protects information made confidential under law, we will address its applicability to Exhibit E.

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 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 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).

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. 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).

You contend the attorney-client privilege is applicable to the entirety of the information in Exhibit E. 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). You state Exhibit D was provided to the college by its attorney for the purpose of the rendition of legal services to the college. Furthermore, we understand Exhibit E reflects communications between college employees and officials and attorneys for the college. You state the information at issue was intended to remain confidential, and that confidentiality has been maintained. Based on your representations and our review, we find the college may withhold Exhibit D and the information we have marked in Exhibit E under Texas Rule of Evidence 503.<sup>3</sup> *See Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (concluding attorney’s entire investigative report was protected by attorney-client privilege where attorney was retained to conduct investigation in her capacity as attorney for purpose of providing legal services and advice). However, we find you have failed to demonstrate the remaining information in Exhibit E consists of a privileged communication for purposes of rule 503. Thus, the college may not withhold any of the remaining information in Exhibit E under rule 503 of the Texas Rules of Evidence.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered highly intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find you have not demonstrated how the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining

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<sup>3</sup>As our ruling is dispositive for this information, we do not address your remaining argument to withhold it.

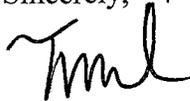
responsive information may not be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the college may withhold Exhibit D and the information we have marked in Exhibit E under Texas Rule of Evidence 503. The college must release the remaining responsive 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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 586579

Enc. Submitted documents

c: Requestor  
(w/o enclosures)