



**KEN Paxton**  
ATTORNEY GENERAL OF TEXAS

August 3, 2016

Ms. Rebecca L. Bradley  
Counsel for the Blue Ridge Independent School District  
Abernathy Roeder Boyd & Hullett P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2016-17471

Dear Ms. Bradley:

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# 621192.

The Blue Ridge Independent School District (the "district"), which you represent, received a request for all attorney billing records submitted to the district over a specified time period. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. 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* (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion the district did not comply with the procedural obligations of section 552.301 of the Government Code in requesting a decision from this office. Pursuant to section 552.301(b), a governmental body must request a ruling from this office and state the exceptions that apply within ten business days after receiving the request for information. *See Gov't Code § 552.301(b)*. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information

requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. The district received the instant request on May 17, 2016. The district informs us it observed Memorial Day on May 30, 2016. This office does not count any holidays, including skeleton crew days observed by a governmental body, as business days for the purpose of calculating a governmental body's deadline under the Act. Accordingly, the district's ten- and fifteen-business-day deadlines for the first request were June 1, 2016, and June 8, 2016, respectively. The envelope in which the district requested a ruling pursuant to section 552.301(b) was postmarked May 25, 2016, and the envelope in which the district submitted the information required by section 552.301(e) was postmarked June 2, 2016. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the district complied with the requirements of section 552.301 of the Government Code.

Next, we note you have redacted information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *Id.* §§ 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, you have been granted a previous determination to withhold such information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we are able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See Gov't Code* § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"); *id.* § 552.302. Thus, in the future, the district should refrain from redacting, without authorization, any information it submits to this office in seeking an open records ruling.

Further, we note the responsive information is 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:

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

*Id.* § 552.022(a)(16). The submitted information consists of 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.* You seek to withhold the submitted information under section 552.107 of the Government Code. However, section 552.107 is discretionary in nature 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, information subject to section 552.022 may not be withheld under 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). Accordingly, we will address your claim of the attorney-client privilege under rule 503 of the Texas Rules of Evidence.

Texas Rule of Evidence 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).

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 assert the submitted information must be withheld in its entirety under rule 503. You inform us the information at issue was communicated between attorneys for the district and district staff for the purpose of requesting and rendering legal advice. You state the information at issue was intended to, and has remained, confidential. However, section 552.022(a)(16) of the Government Code provides information “that is *in* a bill for attorney’s fees” is not excepted from required disclosure unless it is confidential under other law or privileged under the attorney-client privilege. *See Gov’t Code § 552.022(a)(16)* (emphasis added). This provision, by its express language, does not permit the entirety of an attorney fee bill to be withheld. *See also* Open Records Decisions Nos. 676 (attorney fee bill cannot be withheld in 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 excepted only to extent information reveals client confidences or attorney’s legal advice). Accordingly, the district may not withhold the entirety of the submitted fee bills under Texas Rule of Evidence 503.

Upon review, we find the district has established the information we have marked within the attorney fee bills constitutes attorney-client communications under rule 503. Thus, the district may withhold the information we marked within the attorney fee bills pursuant to rule 503 of the Texas Rules of Evidence. However, we find you have failed to demonstrate the remainder of the fee bills at issue consist of privileged attorney-client communications. We note an entry stating a memorandum or 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 may be withheld under rule 503. The remaining information 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,

A handwritten signature in black ink, appearing to read "Ian Lancaster". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/akg

Ref: ID# 621192

Enc. Submitted documents

c: Requestor  
(w/o enclosures)