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ATTORNEY GENERAL OF TEXAS

August 10, 2016

Mr. Christopher B. Gilbert
Counsel for the Corpus Christi Independent School District
Thompson & Horton, L.L.P.
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027

OR2016-18006

Dear Mr. Gilbert:

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# 622668.

The Corpus Christi Independent School District (the "district"), which you represent, received a request for all public records regarding any investigations into district board members' behavior regarding business with two named individuals and two named businesses. You claim some of the submitted information is excepted from disclosure under sections 552.107 and 552.135 of the Government Code and privileged under Texas Rule of Evidence 503.¹ We have considered your arguments and reviewed the submitted information.

Initially, you contend portions of the submitted information are not responsive to the present request for information because they do not pertain to the two named individuals or the two named businesses in the request. The requestor seeks all public records regarding any investigations into district board members' behavior regarding business with two named individuals and two named businesses. The exhibits you submitted are such records because

¹Although you also raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Accordingly, we do not address your argument under section 552.101.

they do involve the named individuals or businesses. Although the portions you indicate do not involve the named individuals or businesses, they are part of these records, and the records in their entireties are responsive to the request.

Next, we must address the applicability of section 552.007 of the Government Code to a portion of the submitted information. Section 552.007 provides that 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 under law. *See* Gov't Code 552.007; 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). You state the district released some of the submitted information in response to a previous request for information. Section 552.107(1) of the Government Code and Texas Rule of Evidence 503 do not prohibit the release of information or make information confidential. *See* 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). Accordingly, to the extent the submitted information has already been released to any member of the public, the district may not now withhold that information under section 552.107 of the Government Code or Texas Rule of Evidence 503. To the extent the submitted information was not previously released, we will address your arguments against its disclosure.

Next, we note some of the submitted 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:

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

...

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

Gov't Code § 552.022(a)(1), (3). Exhibits A and C consist of completed reports that are subject to section 552.022(a)(1). The district must release the completed reports pursuant to section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *See id.*

§ 552.022(a)(1). Exhibit D consists of an engagement letter between the district and outside counsel for the district that is subject to section 552.022(a)(3), which must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3). You seek to withhold the information subject to section 552.022(a)(1) and some of the information subject to section 552.022(a)(3) 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* ORDs 676 at 10-11, 665 at 2 n.5, 663 at 5. Therefore, the information at issue 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). We will therefore consider your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the information subject to section 552.022. Further, as section 552.135 of the Government Code can make information confidential under the Act, we will consider your argument under section 552.135 for the information subject to section 552.022. We will also consider your argument under section 552.107 for Exhibit B.

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 state the information submitted as Exhibits A, C, and D consists of communications between the district's general counsel, outside counsel for the district, and district officials in their capacities as clients. You state the communications were made for the purpose of facilitating the rendition of legal services to the district. You further state these communications were intended to be, and have remained, confidential. Based on these representations and our review, we find the district has demonstrated the applicability of the attorney-client privilege to the information at issue. *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). Accordingly, the district may withhold Exhibits A and C and the information you have highlighted in Exhibit D under rule 503 of the Texas Rules of Evidence.²

You claim section 552.107 of the Government Code for Exhibit B. Section 552.107(1) protects information that comes within the attorney-client privilege. The elements of the privilege under section 552.107 are the same as those discussed for rule 503. 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. 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*, 922 S.W.2d at 923.

You state Exhibit B consists of a communication between outside counsel for the district and district officials in their capacities as clients, made for the purpose of the rendition of legal services to the district. You state the communications were intended to be confidential. Based on your representations and our review, we find you have demonstrated the

²As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

applicability of the attorney-client privilege to the information at issue. Accordingly, the district may withhold Exhibit B under section 552.107 of the Government Code.

In summary, the district may withhold Exhibits A and C and the information you have highlighted in Exhibit D under rule 503 of the Texas Rules of Evidence. The district may withhold Exhibit B under section 552.107(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, 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bw

Ref: ID# 622668

Enc. Submitted documents

c: Requestor
(w/o enclosures)