

WALSH, ANDERSON,
BROWN, ALDRIDGE
& GALLEGOS, P.C.

ATTORNEYS AT LAW

September 15, 2009

VIA CERTIFIED MAIL R.R.R. No. 7160.3901.9845.3601.7132

The Honorable Greg Abbott
Attorney General of Texas
Open Records Division
209 W. 14th Street, 6th Floor
Austin, Texas 78701

Re: Request for Public Information Determination – **ID No. 361318**

Dear General Abbott:

On September 8, 2009, I submitted a letter to your office on behalf of Glen Rose Independent School District (“Glen Rose ISD” or “the District”), requesting a public information determination. In accordance with the Public Information Act, Texas Government Code section 552.301, I am now submitting the additional information required for review in advance of the fifteen-day deadline set forth in Texas Government Code § 552.301(e).¹

THE REQUEST TO THE DISTRICT

On August 24, 2009 Glen Rose ISD received a request for documentation and correspondence regarding several matters. The request is attached as **Exhibit 1**.

The District has produced additional responsive information to the requestor, but believes that the records attached as **Exhibit 2** are confidential and must be withheld.

¹Glen Rose ISD was closed for business on Monday, September 7, 2009 in observance of Labor Day. Consequently, and based upon the analysis of OR 99-1474 (May 1999), the District did not count that day toward the ten and fifteen business day deadlines for submission of this request since the District was not open for business any part of the day on that date.

EXCEPTIONS TO DISCLOSURE

The District asserts that the responsive documents are confidential pursuant to Texas Government Code Sections 552.101, 552.107, 552.1175 as well as Texas Rule of Evidence 503.

TEXAS GOV'T CODE 552.107 AND TEXAS RULE OF EVIDENCE 503

Section 552.107 of the Texas Government Code excepts from public disclosure "information that the attorney of a political subdivision is prohibited from disclosing because of a duty to the client under" the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct. In November 2002, your office acknowledged in ORD-676 that "information that is protected under Texas Rules of Evidence 503 is excepted from disclosure under § 552.107(1)." That same decision also acknowledged that Texas Rules of Evidence 503 qualifies as "other law" for purposes of information that is normally considered public under Texas Government Code § 552.022.

In the case at hand, the requestor seeks correspondence related to the retention of electronic mail. The responsive documents attached at **Exhibit 2** are privileged correspondence between the school district's attorneys and school district representatives. As such, they are protected from disclosure by Texas Rules of Evidence 503 and excepted from the Public Information Act by § 552.107(1). Applying the test set out by the Attorney General in ORD-676 as indicated below, the documents at issue should not be disclosed.

First, the District retains Walsh Anderson to provide professional legal services. Glen Rose ISD is a client receiving professional legal services from Walsh Anderson and its attorneys. Glen Rose ISD pays an annual retainer fee to receive professional legal advice pertaining to potential claims, liability, and violations of law presented in assorted circumstances and to provide legal recommendations on how to proceed in various situations that may occur throughout the school year. In addition, for more detailed issues or matters of a longer duration, the District employs Walsh Anderson and its attorneys to provide professional legal advice on specific and ongoing cases. In this particular case, the District worked with Walsh, Anderson attorney Dorcas Green to review its email retention practices.

Second, the requested documents reflect information that was communicated between Glen Rose ISD and its attorneys. Providing legal advice and services to the District in this instance necessarily involved the exchange of information and communication between attorney and client. This exchange of communication between the District and its attorneys was critical to the District receiving the advice and information it needed and to the law firm in order to provide thorough legal representation.

The correspondence at **Exhibit 2** reveals privileged advice and communications between Ms. Green and the District's Technology Director, as well as communications between the Technology Director and Superintendent regarding the advice and information communicated by Ms. Green. This privileged correspondence meets the second aspect of the test as set out by the Attorney General in ORD-676.

Third, the requested information reflects confidential communications that were not intended to be disclosed to any third parties. Applying the third aspect of the test described by the Attorney General in ORD-676, the District notes that the correspondence at issue consists of electronic mail messages that contain a clear and unambiguous confidentiality notice. Moreover, the opinion letter provided by Ms. Green is clearly labeled "**CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED.**" The correspondence was obviously intended to be confidential - none of the information discussed was to be provided or released to any third person other than those to whom disclosure might be necessary in order to provide legal services to the District. Because this document memorializes confidential advice between Ms. Green and the District representatives, it is privileged and should not be disclosed.

Having established all elements of ORD-676, the documents are protected from disclosure as confidential attorney-client communications under Texas Rules of Evidence 503 and excepted from disclosure by Texas Government Code § 552.107. Since the requested documents are, in their entirety, confidential attorney-client communications as contemplated by Rule 503, they are therefore excepted from disclosure in its entirety pursuant to Texas Government Code Section 552.107. This position was reiterated in ORD-676: "We conclude that section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege as defined in Texas Rule of Evidence 503." Based on this precedent, the District contends that the documents included as **Exhibit 2** should be withheld in their entirety.

TEXAS GOV'T CODE § 552.101

The District asserts that the responsive documents attached as **Exhibit 2** are excepted from disclosure by Section 552.101 of the Texas Government Code. This exception protects "information considered to be confidential by law," either constitutional, statutory, or by judicial decision, including information coming within the common-law or constitutional right to privacy. Texas Rule of Evidence 503, which makes attorney-client communications confidential, makes the requested information confidential. Therefore, pursuant to Section 552.101, the documents at **Exhibit 2** are confidential by law and should not be disclosed.

N/A

The Honorable Greg Abbott
September 15, 2009
Page 4

TEX. GOV'T CODE 552.1175

Portions of the record included as **Exhibit 3** reveal the private cell phone number of the County Sheriff and Deputy Sheriff, both peace officers as defined by Article 2.12(1) of the Code of Criminal Procedure. The District maintains that this information cannot be disclosed in accordance with Texas Government Code Section 552.1175.

In this case, neither the Sheriff nor the Deputy Sheriff consent to release of this information. Accordingly, the bracketed information contained within the document attached as **Exhibit 3** is excepted from disclosure pursuant to Texas Government Code Section 552.1175.

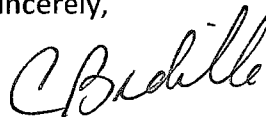
CONCLUSION

Pursuant to Texas Government Code Section 552.301, the documents responsive to the request attached as **Exhibit 1** is attached hereto as **Exhibits 2 and 3**.

The documents are submitted for *in camera* inspection without waiving the District's claims that they are excepted from disclosure to all persons, including the requestor, and with the understanding that the Attorney General's office will not release this information to the public.

In accordance with state law, Glen Rose ISD believes that the requested information addressed herein should not be released. On behalf of Glen Rose ISD, I hereby request that your office resolve this matter. Please contact me if you have any questions or require additional information or documentation to assist in this determination.

Sincerely,



Christine Badillo

Enclosure

CC: **VIA FIRST CLASS MAIL (w/o ENCLOSURE)**
Mr. Wayne Rotan
Superintendent of Schools
Glen Rose ISD
P.O. Box 2129
Glen Rose, Texas 76043-2129