



Alaina F. Smith
Attorney

October 17, 2018

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711

VIA CMRRR: 7017 0190 0000 8523 4537

Re: Public Information Act Disclosure Determination Request

Dear Sir or Madam:

On Wednesday, September 26, 2018, Katy Independent School District (referred to herein as "Katy ISD or "District") received a request for information (the "Request") from Mr. Sean Dolan. For your reference a copy of the Request has been attached hereto as Exhibit A. Katy ISD believes some information sought may not be subject to public disclosure or may be private under current law. As such, the District wishes to obtain a ruling on withholding from public disclosure such information and asserts Texas Government Code Sections 552.101 (Confidentiality under Specific Statutes and Judicial Decision), 552.107 (Certain Legal Matters), 552.111 (Agency Memoranda), 552.139 (Computer Security), and/or other laws under 552.022 or other law or other rules requiring confidentiality, including but not limited to Texas Rule of Evidence 503, apply to information sought in the Request. The District seeks the opinion of the Office of the Attorney General regarding whether it may withhold certain information sought in the Request and respectfully requests your determination as to whether the exception to required disclosure asserted by Katy ISD applies to such information sought in the Request.

As noted, the Request was received by the District on September 26, 2018. Katy ISD asserts that this request is timely under the Texas Government Code.

In the Request, the Requestor seeks copies of all raptor sign-in and sign-outs from any District buildings, for Lance Hindt and Ashley Vann for March 21st through March 26, 2018. The request also seeks all communications to or from Lance Hindt, Ashley Vann, Courtney Doyle, and Bill Lacy including texts, emails, or any other form of communication between March 21 and March 26, 2018.

Katy ISD submits this letter – along with the subject documents, which are attached as Exhibits B-D– to explain why it should be permitted to withhold or redact such information. Katy ISD seeks the opinion of the Office of the Attorney General as to whether it may withhold or redact certain information responsive to the Request.

§ 552.107; § 552.101 & Texas Rule of Evidence 503 (Certain Legal Matters)

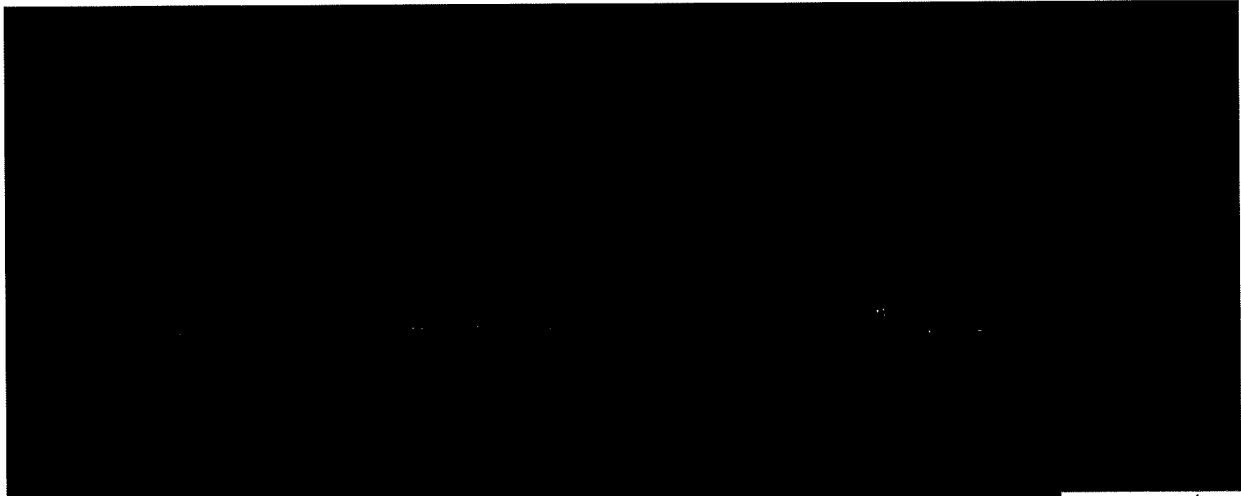
Pursuant to Texas Government Code Chapter 552, Katy ISD respectfully requests your determination as to whether the following exceptions to required disclosure apply: section 552.107 (Certain Legal Matters) and Texas Rule of Evidence 503. Section 552.107 specifically incorporates the attorney-client privilege as an exception to disclosure; the requested information is privileged under Texas Rule of Evidence 503. Section 552.107 is the proper section of the Government Code to raise when asserting the attorney-client privilege in a request for public information that is not subject to section 552.022. Tex. Att'y Gen. ORD-676 at 1-2 (2002). Texas Rule of Evidence 503 is proper to raise for requests of information that fall under Texas Government Code section 552.022. *Id.* at 6.

The attorney-client privilege ensures the free flow of information between attorney and client by assuring that the communication will not later be disclosed. *Republic Ins. Co. v. Davis*, 856 S.W.2d 158, 160 (Tex.1993); *West v. Solito*, 563 S.W.2d 240, 245 (Tex.1978). Confidential communications promote effective legal services, which promote the broader societal interest of the effective administration of justice. *Davis*, 856 S.W.2d at 160; *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). Certain information sought in the request is exempt from discovery under the attorney client privilege, recognized in Section 552.107(1) of the Public Information Act. Section 552.107(1) excepts information from section 552.021 if "it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence or the Texas Disciplinary Rules of Professional Conduct." Tex. Gov't Code § 552.107(1). The attorney general has interpreted this exemption to except from disclosure confidential information that falls within the attorney-client privilege. *See* Tex. Att'y Gen. ORD-676 (2002).

The attorney-client privilege protects from disclosure confidential communications made for the purpose of facilitating the rendition of professional legal services. Tex. R. Evid. 503(b)(1). A communication is confidential if it is not intended to be disclosed to third persons. Tex. R. Evid. 503(a)(5). The privilege includes communications between the client or a representative of the client and the client's lawyer or a representative of the lawyer employed to assist the lawyer in the rendition of professional legal services, between the lawyer and the lawyer's representative, between representatives of the client or between the client and a representative of the client, or among lawyers and their representatives representing the same client. Tex. R. Evid. 503(b)(1)(A)-(E). Further, if a communication consists of both privileged and factual or otherwise discoverable information, the entire communication is protected as privileged and is exempt from disclosure under the Act. Tex. Att'y Gen. ORD-676 at 5.

In *Harlingdale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied), the court held that an attorney's entire investigative report was protected by the attorney-client privilege where the attorney was retained to conduct an investigation in her capacity as an attorney to better provide legal services and advice. In *Harlingdale*, the school district hired an attorney to conduct an investigation and provide legal advice to the district, even though there were lower cost non-attorney options for the investigation aspect of the job. *Id.* at 333. The school district chose the attorney to conduct the investigation to utilize the protection of the attorney-client privilege in the investigation, and so the attorney would be better-able to provide legal advice. *Id.* Relying on

analysis in a Fourth Circuit interpretation of *Upjohn Co. v. United States*, 449 U.S. 383 (1981), the *Harlingdale* court recognized that if the investigation is related to the rendition of legal services, all of the communications between the attorney and the school district are protected as privileged attorney-client communications. *Harlingdale*, 25 S.W.3d at 334.

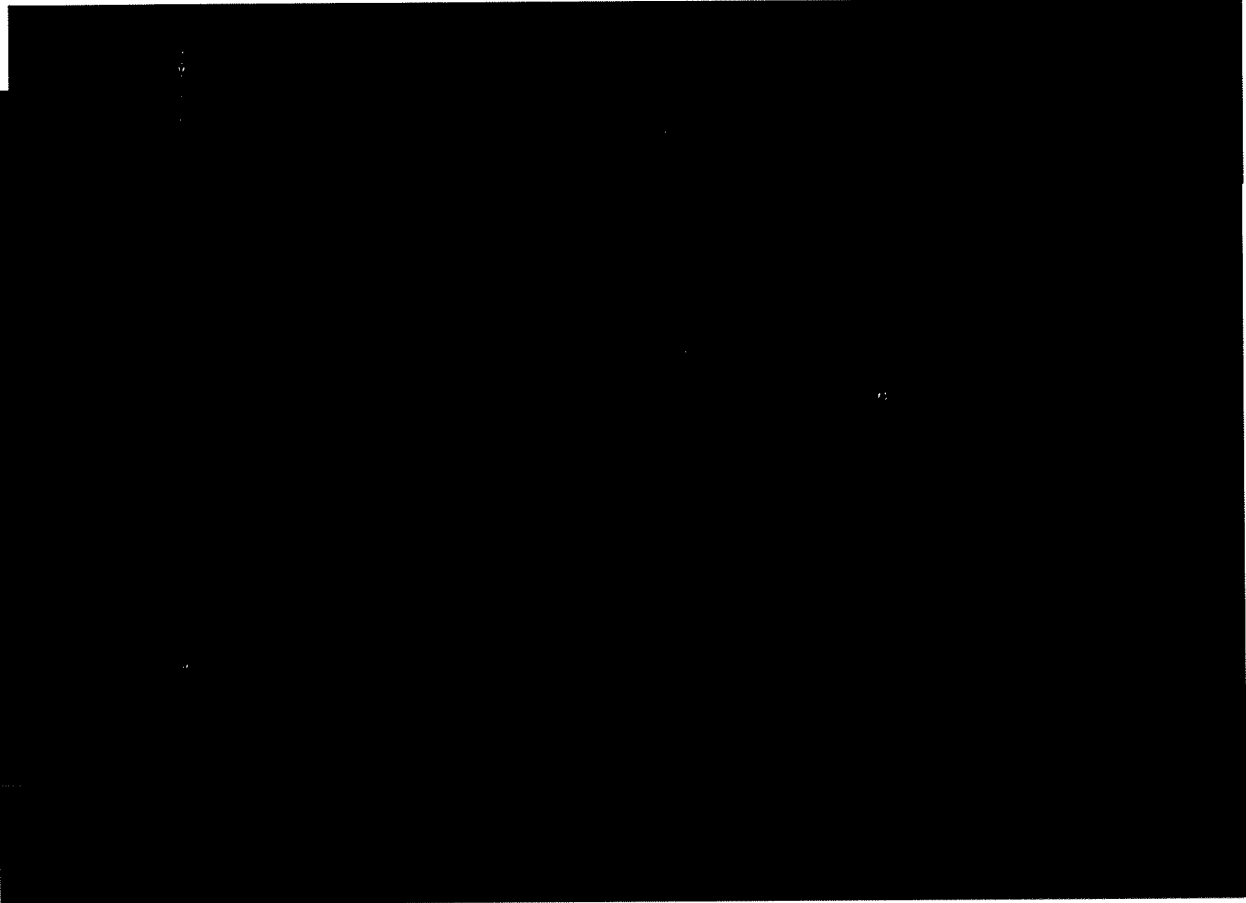


Because the information has been kept confidential, and not disclosed to parties outside of Katy ISD, it should be excepted from public disclosure.

§ 552.111 (Agency Memoranda)

Additionally, and/or alternatively, pursuant to Texas Government Code Chapter 552, Katy ISD respectfully requests your determination as to whether the following exceptions to required disclosure apply: § 552.111 (Agency Memoranda). Katy ISD requests that the documents in Exhibit B be excepted in their entirety from disclosure because they are protected by the deliberative process privilege, section 552.111. The deliberative process privilege, as incorporated into the Public Information Act, protects from disclosure intraagency and interagency communications consisting of advice, opinion or recommendations on policymaking matters of the governmental body at issue. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 361, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 158 (Tex. App.—Austin 2001, no pet.). The purpose of withholding advice, opinion or recommendations under section 552.111 is “to encourage frank and open discussion within the agency in connection with its decision-making processes” pertaining to policy matters. *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.). Furthermore, when factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See Tex. Att’y Gen. ORD-313 at 3 (1982)*. The Attorney General’s Office also has concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter’s advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See Tex. Att’y Gen. ORD-559 at 2 (1990) (applying statutory predecessor)*. Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses

the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.




§552.139 (Computer Security)

Additionally, and/or alternatively, pursuant to Texas Government Code Chapter 552, Katy ISD respectfully requests your determination as to whether the following exceptions to required disclosure apply: § 552.139 (Computer Security). Katy ISD requests that the documents in Exhibit D be excepted in their entirety from disclosure because they are protected as computer network security, pursuant to section 552.139. Section 552.139 of the Government Code provides, in relevant part, that information is excepted from required public disclosure if it is information that relates to computer network security, the design, operation, or defense of a computer network. Specifically, section 552.139(b) makes confidential:

- 1) A computer network vulnerability report;
- 2) Any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or

contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use;

- 3) A photocopy or other copy of an identification badge issued to an official or employee of a governmental body; and
- 4) Information directly arising from a governmental body's routine efforts to prevent, detect, investigate, or mitigate a computer security incident, including information contained in or derived from an information security log.



As such, the records in Exhibit D should be excepted from public disclosure consistent with Texas Government Code Section 552.139.

Responsive documents not at issue in this request for an opinion from the office of the Attorney General have been made available to the requestor. Katy ISD respectfully requests that the office of the Attorney General advise Katy ISD on the District's duty of release of any of the documents **or portions** of documents so submitted.

By redacted copy of this letter, I am hereby notifying the requestor of the District's request for opinion from the office of the Attorney General.

Thank you for your attention in this matter.

Sincerely,



Alaina Smith
STAFF ATTORNEY
KATY INDEPENDENT SCHOOL DISTRICT

Enclosures

cc: (redacted w/o enclosures)

Sean Dolan
6007 Franz Ct.
Katy, Texas 77493

VIA EMAIL: Sean@abetterlegacy.com
VIA CMRRR: 7017 0190 0000 8523 4520