

# UNDERWOOD

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December 23, 2022

Honorable Ken Paxton  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

VIA CERTIFIED MAIL, RRR: 7020 1810 0000 1327 0826

**RE: Public Information Decision Request Concerning Information Considered to be Confidential by Law or Excepted from Disclosure Pursuant to Texas Government Code §§552.101, 552.107, 552.117 and 552.136.**

Dear Mr. Paxton:

My name is Matt Wade with the Underwood Law Firm and we represent Weatherford College on this public information request. On behalf of the Weatherford College (the "College") and pursuant to the provisions of Chapter 552 of the Government Code, also known as the Public Information Act (the "Act"), the College is requesting a public information decision for a request the College received on December 1, 2022 for information/ documents regarding property transfer between Weatherford College and Community Christian School. A copy of the request is attached hereto as "Exhibit A".

The College has already released to the requestor information considered public and open but believes that some of the information may be protected from disclosure by the exceptions listed in the Act under §§ 552.101, 552.107, 552.117 and 552.136.

**Section 552.101 – Exception: Confidential Information**

The College respectfully asserts that §552.101 of the Act applies to the requested information in that the information being requested contains information considered to be "confidential by law, either constitutional, statutory, or by judicial decision." Specifically, Section 182.052 of the Texas Utilities Code excepts from disclosure information in a customer's account record.

Texas Utilities Code § 182.052

§ 182.052. Disclosure of Personal Information

(a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, unless the customer requests that the government-operated utility disclose the information.

....

(e) A governmental body as defined by Section 552.003, Government Code, may withhold information prohibited from being disclosed under this section without the necessity of requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code.

Texas Utilities Code § 182.051

§ 182.051. Definitions

In this subchapter:

....

(3) "Government-operated utility" means a governmental body or an entity governed by a governmental body that, for compensation, provides water, wastewater, sewer, gas, garbage, electricity, or drainage service.

(4) "Personal information" means an individual's address, telephone number, or social security number.

Therefore, for the reasons stated above, the College respectfully asserts that the information responsive should be withheld from disclosure.

**Section 552.107 – Exception: Certain Legal Matters**

§552.107(1) states that the following information is exempt from public disclosure and may apply in this circumstance:

(1) 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 Evidence or the Texas Disciplinary Rules of Professional Conduct

Under the Texas Rules of Evidence 503- Lawyer-Client Privilege, a client has privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purposes of facilitating the rendition of professional legal services to the client under the following ways:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

See TEX. R. EVID. 503.

Weatherford College is represented by their General Counsel, Dan Curlee. Additionally, the College retained James Eggleston with the law firm Eggleston King Davis, LLP as their outside counsel to provide legal counsel on this property transaction. In order to withhold 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 the 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. Upon 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 Pittsburg Corning Corp. v. Caldwell*, 861 S.W. 2d 423, 427 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1993, orig. proceeding).

Attached as part of Exhibit B are a number of documents that are clearly communications between legal counsel and representatives of their client providing legal counsel that was not intended to be disclosed to third parties. This information listed under this exception contained in the documents attached as Exhibit B is excepted from disclosure and should not be released.

**Section 552.136- Exception: Confidentiality of Credit Card, Debit Card, Charge Card, and Access Device Numbers:**

The College respectfully asserts that §552.136 of the Act applies to the requested information. Specifically, §552.136(a) of the Act applies and excepts from disclosure the following:

- (a) “access device”...or means of access device may be used to:
  - (1) obtain money, goods, services, or another thing of value; or
  - (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

The information listed in this exception is contained in the documents requested and is shown in "Exhibit B" attached and should not be released.

Also, please find enclosed a copy of the letter given to the requestor as "Exhibit C".

Thank you for your consideration of these matters. Please do not hesitate to contact me if you need further information with regard to this request for a decision.

Sincerely,



Matt Wade

Enclosures – Exhibits

cc: *w/o enclosures*  
Freedom From Religion foundation  
c/o Christopher Line, Staff Attorney  
P.O. Box 750  
Madison, WI 53701  
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