



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 22, 2017

Mr. Allen M. Keller  
Counsel for IDEA Public Schools  
Schulman, Lopez, Hoffer, and Adelstein, L.L.P.  
517 Soledad Street  
San Antonio, Texas 78205-1508

OR2017-19181

Dear Mr. Keller:

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# 671925.

IDEA Public Schools, Inc. ("IDEA"), which you represent, received a request for information pertaining to the formation of IDEA Public Schools USA, L.L.C ("IDEA USA") and IPS Enterprises, L.L.C. ("IPS") You claim the submitted information is not subject to the Act, or in the alternative, that a portion of it is excepted from disclosure under section 552.107 of the Government Code.<sup>1</sup> We have considered your arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Although you raise section 552.101 of the Government Code, we understand you to claim, based on the substance of your arguments, that the submitted information is not public information subject to release under the Act.

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We note the Act is applicable only to “public information.” *See id.* §§ 552.002, .021. Section 552.002(a) reads as follows:

(a) In this chapter, “public information” means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Gov’t Code § 552.002(a). Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov’t Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). Further, information that is written, produced, collected, assembled, or maintained by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity may be subject to disclosure under the Act if the information pertains to official business of the governmental body. Gov’t Code § 552.002(a)(3). Information is “in connection with the transaction of official business” if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See id.* § 552.002(a-1). Moreover, section 552.001 of the Act provides it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See id.* § 552.001(a).

You inform us IDEA is an open-enrollment charter school subject to subchapter D, chapter 12 of the Education Code. *See* Educ. Code §§ 12.101 *et seq.* (authorizing formation of open-enrollment charter schools). We note section 12.105 provides that “[a]n open-enrollment charter school is part of the public school system of this state.” *Id.* § 12.105. Further, section 12.1051 of the Education Code reads as follows:

(a) With respect to the operation of an open-enrollment charter school, the governing body of a charter holder and the governing body of an open-enrollment charter school are considered to be governmental bodies for purposes of Chapters 551 and 552 of the Government Code.

(b) With respect to the operation of an open-enrollment charter school, any requirement in Chapter 552 of the Government Code, or another law that concerns open meetings or the availability of information, that applies to a school district, the board of trustees of a school district, or public school students applies to an open-enrollment charter school, the governing body of a charter holder, the governing body of an open-enrollment charter school, or students attending an open-enrollment charter school.

*Id.* § 12.1051. You inform us that the requested information consists of certain corporate documents and communications pertaining to the formation of IDEA USA and IPS by IDEA. You argue these records do not relate to the operation of an open-enrollment charter school for purposes of subsections 12.1051(a) and (b) and, thus, are not considered to be public information subject to release under the Act. We disagree. Upon review, we find IDEA maintains the submitted information in connection with the transaction of its official business as an open-enrollment charter school. We further find the records at issue were created as part of the operation of IDEA which, as noted above, you inform us is an open-enrollment charter school subject to subchapter D, chapter 12 of the Education Code. *See id.* §§ 12.1051, 12.1052(b) (stating records of an open enrollment charter school are government records for all purposes under state law); *see also* Attorney General Opinion GA-0446 (2006) (citing to section 12.1051 and noting “open-enrollment charter schools are subject to many of the same laws applicable to political subdivisions that are designed to promote openness and fairness in government”); *cf.* Attorney General Opinion GA-1079 (2014) (noting section 12.1051 requires open enrollment charter schools to comply with the Open Meetings Act). Thus, the submitted information constitutes “public information” as defined by section 552.002(a) of the Government Code. Accordingly, the submitted information is subject to the Act in its entirety and IDEA must release it, unless it falls within an exception to public disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302. Therefore, we must determine whether the submitted information is excepted from release under the Act.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Gov’t Code § 552.107(1). 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. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “to facilitate the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. 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 v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state Attachment 4 consists of communications involving attorneys for IDEA and IDEA officials in their capacities as clients. You state these communications were made in furtherance of the rendition of professional legal services to IDEA. You further state these communications were intended to be, and have remained, confidential. Based on these representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to Attachment 4. Accordingly, IDEA may withhold Attachment 4 under section 552.107(1) of the Government Code. As you make no further arguments against release of the remaining information, IDEA must release it to the requestor.

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](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 "Ramsey Abarca", with a long horizontal flourish extending to the right.

Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/bw

Ref: ID# 671925

Enc. Submitted documents

c: Requestor  
(w/o enclosures)