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SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. _____

In the Supreme Court of Texas

TEXAS PUBLIC POLICY FOUNDATION,
Petitioner,

v.

HIGHLAND PARK INDEPENDENT SCHOOL DISTRICT,
Respondent.

On Petition for Review from the Fifth Court of Appeals, Dallas, Cause No. 05-24-00813-CV, and the 14th Judicial District Court for Dallas County, Cause No. DC-23-01161, Honorable Eric V. Moyé

PETITION FOR REVIEW

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STATEMENT OF THE CASE

Nature of the Case:	This case asks whether a governmental body can hide an investigative accounting report concerning alleged financial malfeasance at a public school facility from disclosure under the Texas Public Information Act by channeling the report through an attorney and asserting attorney-client privilege.
Trial Court & Judge:	14th Judicial District Court, Dallas County Judge Eric V. Moyé
Trial Court Disposition:	On April 30, 2024, following a bench trial, the trial court entered a final written order denying Plaintiff TPPF's petition for a writ of mandamus. The trial court issued findings of fact and conclusions of law on May 20, 2023.
Parties in the Court of Appeals:	Plaintiff TPPF was the appellant. Defendant HPISD was the appellee.
Court of Appeals & Justices:	Fifth Court of Appeals, Dallas, Texas Justices Garcia, Breedlove, and Lewis
Court of Appeals Disposition:	The court of appeals affirmed the district court's decision, with Justice Lewis calling on this Court to review. No motions for rehearing or en banc consideration were filed. *Tex. Pub. Pol'y Found. v. Highland Park Indep. Sch. Dist.*, No. 05-24-00813-CV, 2025 Tex. App. LEXIS 5017 (Tex. App.—Dallas July 16, 2025) (Garcia, J.) (mem. op.); (Lewis, J., concurring). Apps. A, B.

STATEMENT OF JURISDICTION

This Court has jurisdiction under Texas Government Code § 22.001(a) because this case involves "question[s] of law that [are] important to the jurisprudence of the state." Here, both the district court and the appellate court held that a governmental body may circumvent the requirements of the Texas Public Information Act and conceal an investigatory accounting report—core public information—merely by having an attorney hire the accountants. If not corrected, the TPIA essentially no longer applies to governmental investigations. As Justice Lewis stated in her concurrence below, the "dangers and absurdities" of this case demand this Court's attention. The outcome of this case will substantially impact the jurisprudence of public disclosures in Texas.

ISSUES PRESENTED

1. Should this Court revisit *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001), and hold that the attorney–client privilege is not "other law" overriding § 552.022, given that adversarial discovery rules serve different purposes than the Texas Public Information Act and the Legislature purposefully excluded a general privilege exemption?

2. Even if attorney-client privilege is "other law," may a governmental body invoke the privilege to circumvent the Texas Public Information Act by commissioning a factual investigative report through its attorney when that report would be mandatory public information if commissioned directly by the governmental body?

3. Does a governmental body waive the attorney-client privilege when a high-ranking employee publicly discloses the conclusions of the privileged document for the government's benefit?

INTRODUCTION

"Sunlight is said to be the best of disinfectants." Louis D. Brandeis, *Other People's Money and How the Bankers Use It* 92 (1914). This case asks whether a governmental body can draw the curtains—and keep the public in the dark—simply by hiring a lawyer. The courts below allowed Highland Park ISD to do just that—hide a financial report from the public because a lawyer, rather than HPISD itself, hired the accountants.

These rulings gut the Texas Public Information Act, which guarantees the public "complete information about the affairs of government . . . ." Tex. Gov't Code § 552.001(a). And this case provides a blueprint for public servants to launder otherwise public information through an attorney to permissibly conceal it from public scrutiny—defeating the purpose of the TPIA.

Further, if attorney-client privilege is construed broadly in the TPIA context, then waiver of the privilege should be similarly broad. Otherwise, governmental bodies are free to disclose favorable facts while hiding damaging ones.

The TPIA demands transparency. Petitioner respectfully petitions this Court for review to fulfill the TPIA's mandate.

STATEMENT OF FACTS

The Seay Tennis Center is a Highland Park ISD facility that serves the local public schools and the surrounding community. As early as 2015, frustrated citizens raised concerns about management and financial issues at the Tennis Center. CR.783–85.

In 2019, HPISD retained attorney Bryan Neal to investigate alleged financial misconduct at the Tennis Center. CR. 850–851. Neal commissioned accounting firm Whitley Penn to investigate and prepare a report on the Tennis Center's financial operations. CR.743; 746. After investigating, Whitley Penn produced a report summarizing its findings on the Center's financial management and making recommendations for the Tennis Center's financial operations going forward. CR.743. Whitley Penn's report was not published or provided to the public.

In 2022, concerned citizens were still questioning HPISD administrators and board members about the Tennis Center and the alleged mismanagement. C.R.805. In response to several emails, Mike White, HPISD's Assistant Superintendent for Business Services, stated that HPISD had "conducted a thorough investigation . . . with expert assistance. Afterwards, the District took all steps it believed were

appropriate, including revamping the Seay Tennis Center organization and management structure." CR.805. At trial, White testified that the "expert assistance" he was referring to was Whitley Penn. 2.RR.27. HPISD has never retracted or contradicted these statements.

In 2022, Petitioner the Texas Public Policy Foundation requested the Whitley Penn report from HPISD under the Texas Public Information Act. CR.841. HPISD withheld the report and sought a ruling from the Attorney General's office on whether the report was excepted from disclosure under the attorney-client privilege. CR.841. The Attorney General concluded that the report was subject to disclosure as "a completed report subject to section 552.022(a)(1)," but—relying solely on HPISD's assertion that the report was a communication in furtherance of legal advice and that it had not waived privilege—nevertheless determined that HPISD could withhold the report as privileged. CR.841; CR.761–62; Tex. Att'y Gen. Op. OR2022-36895.

Petitioner TPPF sought a writ of mandamus ordering disclosure of the report under Texas Government Code § 552.321(a). The district court reviewed the report *in camera* and, without briefing, summarily declared the Whitley Penn report privileged. Following a short bench trial, the

court ruled that White's email did not waive privilege as to the Whitley Penn report and entered final judgment dismissing the case. 2.RR.28, CR.845. Petitioner TPPF timely appealed.

The court of appeals affirmed the district court, holding that Whitley Penn was an attorney's representative under Texas Rule of Evidence 503(4)(b) and that the report was a communication made for the purpose of facilitating the rendition of legal services. *Tex. Pub. Policy Found. v. Highland Park Indep. Sch. Dist.*, No. 05-24-00813-CV (Tex. App.—Dallas July 16, 2025); App. A at 13. The court of appeals further held that HPISD's email did not waive privilege because it did not reveal Neal's legal advice or disclose the report's contents. *Id.* at 15–18.

Although bound by existing precedent, Justice Lewis issued a concurring opinion to "highlight some dangers and absurdities that can result from an overbroad application of attorney–client privilege protections in the context of investigations." App. B at 1. Due to the risk of governmental bodies shielding the results of investigations from public scrutiny, as HPISD did here, Justice Lewis noted that "the Supreme Court's review and redirection is warranted" in this case. *Id.* at 4.

Petitioner TPPF now seeks Texas Supreme Court review.

SUMMARY OF ARGUMENT

This case demonstrates how governments can exploit a narrow Texas Public Information Act exception to essentially nullify the TPIA's mandate to disclose completed reports and investigations. *See* Tex. Gov't Code § 552.022(a)(1). Based on the model provided by this case, any governmental body would be foolish not to route potentially embarrassing investigations through attorneys to exploit this loophole and undermine the TPIA's clear policy objectives.

Petitioner, the Texas Public Policy Foundation, provides three ways the Court can solve this problem.

First, the Court should reconsider *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). The attorney-client privilege of Texas Rule of Evidence 503 applies to adversarial discovery, but needs qualification for TPIA requests, where the requester lacks the other tools of discovery to uncover non-privileged facts. Further, the Legislature chose not to include a blanket exception for attorney-client privilege and did not intend for it to be shoehorned into the "other law" exception of § 552.022.

Second, even under *In re Georgetown*, the attorney-client exception for TPIA requests should be narrowed to close the loophole that HPISD

exploits here. Factual reports and investigations—core public information under the TPIA—that include no legal advice should not be protected from TPIA disclosure under the privilege.

Third, if privilege remains broadly construed for TPIA requests, waiver should likewise be broadly construed. Governmental bodies should not be allowed to selectively disclose beneficial information from a privileged document, either expressly or impliedly, in a public statement, then hide the full document to avoid embarrassment.

This case presents a straightforward vehicle to narrowly resolve the attorney investigation loophole for TPIA requests. The undisputed facts neatly frame the issues: a non-lawyer produced a report containing no legal advice, and the district relied on that report in communicating to the public before claiming privilege. Resolving this conflict and closing this loophole will advance the policy goals of the TPIA—ensuring public access to governmental information—with no significant consequences outside the TPIA context.

ARGUMENT AND AUTHORITIES

With its opening lines, the Texas Public Information Act declares its foundational purpose—to empower the sovereign citizens of Texas to hold accountable their public servants:

> Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, 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. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

Tex. Gov. Code § 552.001(a). This Court has consistently echoed the statutory command that the TPIA is to be "liberally construed in favor of disclosure of requested information." *E.g.*, *Greater Hous. P'ship v. Paxton*, 468 S.W.3d 51, 58 (Tex. 2015) (recognizing "the legislative mandate that the TPIA be 'liberally construed in favor of granting a request for information.'"); *City of Garland v. Dall. Morning News*, 22 S.W.3d 351, 364 (Tex. 2000) ("Unlike the FOIA, our Act contains a strong statement of public policy favoring public access to governmental information and a

statutory mandate to construe the Act to implement that policy and to construe it in favor of granting a request for information.").

The court of appeals' decision exposes a loophole that undermines the TPIA's very purpose. It allows HPISD to withhold Whitley Penn's purely factual investigative report based on attorney-client privilege—core public information that HPISD must disclose if it had hired the accountants directly. Justice Lewis's concurrence below specifically asks this Court for guidance, highlighting the "dangers and absurdities" that the appeals courts' decision creates—a systemic threat to government transparency. "[B]y choosing to conduct the entire factual investigation *through* the Law Firm, the School District renders it difficult—perhaps impossible under the broad interpretation questioned herein—to prove that the communication of even the basic revealed facts was not 'made to facilitate' legal advice, triggering application of the attorney-client privilege." App. B at 2–3 (Lewis, J., concurring) (citing Tex. R. Evid. 503(b)(1)(B)).

TPPF asks this Court to heed Justice Lewis's request and to fulfill the TPIA's legislative mandate to liberally construe the statute in favor of granting public access to governmental information.

I. This Court should overturn *In re City of Georgetown* and eliminate the blanket attorney-client privilege exception to TPIA requests.

When the Court determined that the Texas Rules of Civil Procedure and Texas Rules of Evidence are "other law" within the meaning of TPIA section 552.022, it failed to fully consider the differences between adversarial discovery and TPIA requests or the TPIA's mandate for liberal construction. *See generally In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). *But see id.* at 338 (Abbot, J., dissenting) ("The more broadly the Court construes this language [incorporating Texas Rule of Evidence 503], the more information may be withheld from disclosure, and the more the legislative policy of public access to information is thwarted.").

A. TPIA requests are not discovery requests, and TPIA requesters lack the tools available in discovery.

The Texas Rules of Evidence apply in a very different context from TPIA requests. In litigation, an opposing party can depose the opposing party's witnesses, demand answers to interrogatories and requests for admissions, and request the production of documents and tangible things in search of relevant facts—even if those facts have been communicated

to counsel. *See, e.g.*, *Upjohn Co. v. United States*, 449 U.S. 383, 396 (1981); *In re Tex. Farmers Ins. Exch.*, 12 S.W.3d 807, 807 (Tex. 2000).

In oral argument for this case at the appeals court, counsel for HPISD similarly suggested that the "Texas Public Policy Foundation is welcome to go interview anybody Whitley Penn interviewed and get that same information." Oral Arg., *Tex. Pub. Pol'y Found. v. Highland Park Indep. Sch. Dist.*, No. 05-24-00813-CV (May 14, 2025) at 22:15–23:04, available at https://tinyurl.com/5thcoa-hpisd. In litigation, that might be true. But not in the context of TPPF's TPIA request.

TPPF has no mechanism to find out who the relevant HPISD employees, former employees, or witnesses are or how to contact them, much less to force them to sit for an interview. *See* Tex. R. Civ. P. 192.3(c); 194.2(b)(5) (requiring disclosure of the name and contact information of persons having knowledge of the relevant facts); 194.2(b)(9) (requiring disclosure of witness statements); 199.1 (allowing litigants to "take the testimony of any person or entity"). TPPF's only tool is its ability to make a request under the TPIA. By incorporating the Texas Rules of Evidence into the TPIA without applying the Legislature's command to construe the TPIA liberally in favor of disclosure, *In re Georgetown* grants

governments the protection of certain discovery rules without the corresponding discovery obligations.

B. The Texas Legislature chose not to provide a blanket exception for the attorney-client privilege in the TPIA.

In re Georgetown's blanket importation of Rule 503 privilege into the TPIA also contradicts the statute's text based on the exceptions the Legislature chose to include. Because the decision created a loophole the Legislature never authorized, the Court should reconsider the breadth of *In re Georgetown*'s incorporation of the Texas Rules of Evidence.

1. The Legislature knows how to provide broad exceptions to required TPIA disclosures.

"[W]hen [the Legislature] desired certain information to be exempt from public disclosure under Chapter 552, it unambiguously noted that exception." *In re Georgetown*, 53 S.W.3d at 340 (Abbott, J. dissenting). Courts should not read in exceptions—especially one as broad as the attorney-client privilege—that aren't there. *See, e.g.*, *Bexar Appraisal Dist. v. Johnson*, 691 S.W.3d 844, 855–56 (Tex. 2024).

In the TPIA, the Legislature enacted two express exceptions from required disclosure specifically relating to and implicating the attorney-client privilege: § 552.103 (litigation or settlement negotiations) and

§ 552.107 (certain legal matters, expressly referencing the Texas Rules of Evidence and Texas Disciplinary Rules of Professional Conduct). By enacting narrow privilege-related exceptions but omitting a blanket privilege exemption, the Legislature made a deliberate choice. "When the Legislature has intended to make information confidential, it has not hesitated to so provide in express terms." *In re Georgetown*, 53 S.W.3d at 340 (Abbott, J. dissenting) (citing *Birnbaum v. All. of Amer. Insurers*, 994 S.W.2d 766, 776 (Tex. App.—Austin 1999, pet. denied)).

The 1999 TPIA amendments confirm this reading. Until 1999, the privilege-related exceptions of §§ 552.103 and 552.107 protected all governmental information—including core public information listed in § 552.022—from disclosure. *In re Georgetown*, 53 S.W.3d at 331. But the amendments removed the Subchapter C exceptions for core public information, rendering it subject to disclosure unless "expressly confidential" under other law. *Id.* Far from authorizing a new privilege exemption, the Legislature's 1999 amendments narrowed governmental discretion and strengthened the presumption of disclosure. But *In re Georgetown* effectively undid the Legislature's reform by reading a blanket exception back into the TPIA. See *id.* ("When the Legislature

amended section 552.022, did it intend 'other law' to include the work-product and consulting-expert privileges codified in the rules of procedure? We conclude that it did.").

2. The Legislature does not hide elephants in mouseholes.

"The legislature does not alter major areas of law 'in vague terms' or no terms at all—'it does not, one might say, hide elephants in mouseholes.'" *Wasson Interests, Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 438 (Tex. 2016) (quoting *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001)). But *In re Georgetown* hung the full weight of the Texas Rules of Evidence and Civil Procedure on the simple phrase "other law" in § 552.022(a).

The result is tellingly nonsensical and contradicts the TPIA's broad policy of favoring public disclosure. While § 552.107 protects non-core public information with an express discretionary attorney-client privilege exception, *In re Georgetown* created an implied non-discretionary exception for core public information under amorphous "other law" language. *But see* Tex. Gov't Code 552.006 ("This chapter does not authorize the withholding of public information or limit the availability of public information to the public, except as *expressly*

provided by this chapter.") (emphasis added). Thus, under *In re Georgetown*, entities *must waive* privilege as to non-core public information but *may keep* the privilege related to more important core public information. *See* Tex. Att'y Gen. Op. OR2002-0676 (2002).

The Court should reconsider the reasoning and holding of *In re Georgetown*. The privilege rule meant for adversarial discovery should not shield government information from public disclosure. And courts should not create exceptions that the Legislature chose to exclude. The fallout from *In re Georgetown* is epitomized here—HPISD manipulates privilege to conceal core public information, undermining the TPIA's text and policy.

II. Alternatively, this Court should narrow the use of attorney-client privilege protection for TPIA requests to avoid virtually nullifying the TPIA's requirement that governmental reports and investigations be open to the public.

A. Governmental bodies are exploiting the attorney-client privilege loophole to withhold factual investigative reports by routing them through attorneys.

HPISD is not alone in manipulating the attorney-client privilege loophole to avoid disclosing potentially embarrassing public information.

El Paso ISD recently hired a lawyer to investigate hazing allegations. The district released its own internal investigation but withheld the attorney's investigation under the attorney-client privilege. Lesley Engle & Andrew J. Polk, *Texas Attorney General Denies Public Access to Franklin High Football Team Hazing Investigation Done by Outside Law Firm*, KVIA-ABC-7 (June 6, 2025), https://tinyurl.com/mruxzvjz.

Similarly, United ISD in Laredo, Texas, hired an attorney to investigate sexual harassment and retaliation allegations against its superintendent. After firing the superintendent, the district refused to release its investigation, asserting attorney-client privilege. *UISD Looks to the Future After Termination of Superintendent*, KGNS (Feb. 22, 2024), https://tinyurl.com/ms8dbwcv.

And Keller ISD parents are currently accusing their school district of the same:

> Attempting to withhold documents and information from the public has become a hallmark of the district since [attorney Tim] Davis was hired to represent the board, according to Laney Hawes, a Keller ISD parent . . . . "We truly believe Tim Davis was hired in part to allow the board to operate secretly and without having to answer to the public or allow us to be involved in their policymaking decisions," said Hawes.

Cody Copeland, *Keller School Board Moves to Block Release of Latest Law Firm Invoices*, Fort Worth Star-Telegram (Aug. 7, 2025, 4:45 p.m.), https://tinyurl.com/5beuckya.

Contrariwise, *University of Texas System v. Franklin Center for Government and Public Integrity* shows a governmental body doing the right thing. 675 S.W.3d 273 (Tex. 2023). The UT System's general counsel hired Kroll Associates, a consulting firm, to investigate allegations of admissions malfeasance. *Id.* at 277. After the investigation, the UT System published the Kroll Report because it provided "only the investigators' factual findings, which would not have been privileged to begin with." *Id.* at 288. In other words, the UT System rightly recognized that public accountability and transparency in purely factual investigations trumps attorney-client privilege.

The Texarkana Court of Appeals recognized the potential risk of attorney-client privilege abuse in the insurance context more than twenty-five years ago. "For instance, the privilege would not apply to [] communications concerning bare facts. If we were to so hold, insurance companies could simply hire attorneys as investigators at the beginning of a claim investigation and claim privilege as to all the information

gathered. This is not the intent of the privilege." *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 341 (Tex. App.—Texarkana 1999). But as this case shows, that warning has gone unheeded—even more egregiously in the public-information context, where the legislative directive favors disclosure.

B. Public disclosure requirements should not depend on the job title of the person preparing the information.

Even if attorney-client privilege under Texas Rule of Evidence 503 is "other law" under the TPIA, only certain communications that clearly implicate legal advice and client confidences should be privileged. *See* Tex. R. Evid. 503(a)(4)(B). The Whitley Penn report is not that type of communication. Written by accountants rather than lawyers, it contains no legal advice and is the exact same report HPISD could have commissioned directly. App. B at 3–4 (Lewis, J., concurring) (explaining that "the nature of the report does not differ from one that could have resulted from a client's internal investigation, without a lawyer intermediary").

Here, attorney Neal hired accountants to investigate what happened at the Seay Tennis Center. And "[t]here is no dispute that the WP report is core public information." App. A at 7. Had HPISD hired

Whitley Penn directly, the report must be disclosed. Why does that change merely because the information was passed through a lawyer? TPPF does not seek Neal's legal advice to HPISD, only the results of Whitley Penn's factual investigation. The Legislature never intended for core public information to be so brazenly hidden from the public by laundering it through an attorney. Unless this Court intervenes, public access to factual investigations depends on the job title of whoever requested or compiled the report rather than its contents.

III. If a broad attorney-client privilege exception applies to TPIA requests, waiver of the privilege should apply equally broadly in the public information context.

Even if the Whitley Penn report is protected by privilege, HPISD waived that privilege when a senior executive disclosed the report's conclusions and HPISD's resulting actions to the public for the school district's benefit. If the attorney-client privilege is broadly interpreted to cover factual investigations that are merely channeled through an attorney, then any use of that privileged information for the government entity's benefit should waive that privilege.

The district court also adopted an erroneous conclusion of law that HPISD could waive privilege only through a majority vote of its Board of

Trustees. CR.854. That cannot be correct. Otherwise, governments would routinely do just what HPISD did here—allow an employee to disclose beneficial parts of a privileged document but withhold the damaging parts by claiming that the employee lacked authority to waive.

A. Governmental bodies should not be allowed to use privileged information for their own benefit without waiving privilege.

When a holder of the attorney-client privilege discloses "any significant part" of a privileged matter—even by implication—the privilege is waived. *Berger v. Lang,* 976 S.W.2d 833 (Tex. App.—Houston [1st Dist.] 1998, pet. denied). The conclusion of a privileged report, like HPISD disclosed here, is a significant part. *See id.* at 837 (finding that the implication that a grievance investigation produced a favorable outcome "disclosed a significant part" of a privileged letter).

HPISD intentionally implied the report's conclusions to assuage public concerns. White's email to concerned citizens explained that, following the investigation, HPISD took "all steps it believed were appropriate, including revamping the Seay Tennis Center organization and management structure." CR.805. That is, Whitley Penn found something wrong. HPISD then acted on Whitley Penn's report to remedy

those issues. Despite disclosing the report's conclusion and resulting actions, HPISD kept the full story hidden behind the attorney-client privilege. Like the testimony in *Berger*, White's email was sufficient to waive privilege, even without directly stating the report's conclusions.

The opinion below makes the standard for waiver more difficult. It asserts that HPISD did not waive privilege because White did not disclose attorney Neal's legal conclusions. App. A at 17. But disclosure of "any significant part" of privileged matter is sufficient, not only legal advice. *Terrell State Hosp. of Tex. Dep't of Mental Health v. Ashworth*, 794 S.W.2d 937, 940 (Tex. App.—Dallas 1990) (revealing partial information and conclusions of an autopsy result forfeited privilege for the entire document).

HPISD and other governmental bodies cannot be allowed to hide their investigations behind privilege and then use that information for their own benefit.

B. A senior executive's disclosure of privileged information waives privilege.

The district court determined as a matter of law that only the HPISD Board of Trustees may waive privilege by a majority vote.[1] CR.854. Not so. In fact, the district court's conclusion imposes a sweeping new legal requirement that risks eroding the waiver doctrine altogether in the context of institutional bodies.

"[T]he power to waive the corporate attorney-client privilege rests with the corporation's management and is normally exercised by its officers and directors." *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 348 (1985). Courts have consistently held that an entity's management—typically a board of directors—may delegate authority to either assert or waive the attorney-client privilege to individual officers, directors, or other employees. *E.g.*, *Velsicol Chem. Corp. v. Parsons*, 561 F.2d 671, 674–75 (7th Cir. 1977) (corporation's senior in-house counsel had implicit authority to waive attorney-client privilege); *Vans, Inc. v. Walmart, Inc.*, 2023 U.S. Dist. LEXIS 97709, at *18–21 (C.D. Cal. June 5, 2023) (finding lower-level employee had

[1] The court of appeals did not reach this issue. App. A at 19 ("[B]ecause we have concluded that the White Email did not waive the privilege, we need not also consider whether White had the authority to do so.").

sufficient authority to waive Walmart's attorney-client privilege where company took inadequate steps to prevent employee's disclosure); *Phx. Ins. Co. v. Diamond Plastics Corp.*, No. C19-1983-JCC, 2020 U.S. Dist. LEXIS 131630, at *8–9 (W.D. Wash. July 24, 2020) (surveying cases and adopting the view that lower-level employees can waive corporate privilege where the corporation took inadequate steps to prevent disclosure).

Here, Mike White, the Assistant Superintendent for Business Services and a high-ranking HPISD official, had authority from the HPISD Board of Trustees to waive privilege as to the Whitley Penn report. In White's email to a member of the public, he cloaks himself with the authority of "the Administration," and notes that he is responding to emails directed to the HPISD Board of Trustees president. CR.805 ("I am responding on behalf of the Administration to your recent emails to Board President Jim Hitzelberger."). HPISD has never attempted to retract or otherwise distance itself from White's statements. White was privy to privileged information about HPISD's investigation into the Tennis Center and "had discussions with legal counsel about the conclusions he drew from the report." 2.RR.27:6–16. In short, White was writing to a

concerned citizen on behalf of and with the authority of HPISD's Board of Trustees when he disclosed a significant part of the Whitley Penn report.

Further, from a practical and policy standpoint, officers and other employees must have implicit authority to waive privilege to avoid the very gamesmanship of privilege that this case demonstrates.

If White, in fact, lacks the authority to waive privilege, the HPISD Board would instruct him to do just what he did here—disclose the conclusions of the district's investigation. Then, when a member of the public asks to see the report supporting these conclusions, HPISD asserts that White lacked the authority to waive privilege. The report remains hidden behind the attorney-client privilege. As with filtering all investigations through lawyers to avoid the TPIA, only the most foolish governments, companies, and organizations would not avail themselves of this gaping loophole in privilege law.

Requiring that only the managing board can waive privilege by a majority vote is not and should not be the law.

PRAYER FOR RELIEF

For the foregoing reasons, Petitioners respectfully request that this Court grant review in this case, reverse the lower courts' holding that the Whitley Penn report—a taxpayer-funded, purely factual investigation—is subject to attorney-client privilege, and issue a writ directing HPISD to disclose the report under the Texas Public Information Act.

Dated: September 2, 2025

Respectfully submitted,

/s/Matthew P. Chiarizio

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4, I certify that this petition contains 4,495 words. This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text other than footnotes, which are in 12-point typeface. In making this certificate of compliance, I rely on Microsoft Word's word-count tool.

/s/Matthew P. Chiarizio
Matthew P. Chiarizio

CERTIFICATE OF SERVICE

I certify that on September 2, 2025, I electronically served a copy of this petition on counsel of record listed below:

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APPENDIX

Tab A

Affirmed and Opinion Filed July 16, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00813-CV

TEXAS PUBLIC POLICY FOUNDATION, Appellant
V.
HIGHLAND PARK INDEPENDENT SCHOOL DISTRICT, Appellee

On Appeal from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-23-01161

MEMORANDUM OPINION

Before Justices Garcia, Breedlove, and Lewis
Opinion by Justice Garcia

This case arises out of Highland Park Independent School District's (the "School District") refusal to produce a report requested by the Texas Public Policy Foundation ("TPPF") pursuant to the Texas Public Information Act. The trial court reviewed the report *in camera* and determined that the report is privileged. After a bench trial, the court concluded the privilege was not waived and denied TPPF's requested mandamus relief.

In three issues, TPPF argues the trial court's order is erroneous because: (i) the report is not protected by the attorney-client privilege, and even if portions of the report are privileged, the non-privileged portions must be disclosed because the

report is core public information, (ii) the School District waived the privilege, and (iii) the trial court erred by excluding evidence that would have given context to the alleged waiver.[1] As discussed below, we affirm the trial court's order.

I. BACKGROUND

The School District retained the law firm of Thompson & Knight LLP (the "Law Firm") to investigate and provide legal advice concerning the District's Seay Tennis Center (the "Center"). Specifically, Bryan Neal, an attorney with the Law Firm was retained to opine on legal issues involved in the Center's operations, including employees' handling of the financial operations of the Center.

The Law Firm engaged an accounting and consulting firm, Whitley-Penn to assist Neal with the investigation. To this end, the Law Firm's engagement letter outlined that the Law Firm was retaining an accounting firm "to assist . . . with an attorney investigation of certain allegations" in furtherance of the Law Firm's rendition of legal services to the School District. Neal considered Whitley-Penn's assistance when analyzing the Center's internal controls and other accounting procedures to formulate and inform his legal advice to the School District.

Whitley-Penn prepared a report (the "WP report") and provided it to the Law Firm as a communication from Whitley-Penn to attorney Neal. Neal used the report to complete his investigation into the allegations regarding the Center and to provide

[1] TPPF's stated issues do not align with the issues raised in the body of the brief. We address all issues raised, albeit not in the numerical order of the stated issues.

legal advice to the School District. The Law Firm did not provide a copy of the WP report to anyone at the School District when it provided its legal advice, nor has the report been released to any third parties outside the context of this litigation.

On March 29, 2021, Michael White, the School District's then Assistant Superintendent for Business Services responded to an inquiry about the Center in an email (the "White Email"). The White Email stated that "there is no mismanagement occurring, there is no malfeasance occurring, and there are no funds being misdirected or mismanaged." The White Email did not expressly reference or disclose the contents of the WP report or the legal advice provided by Neal.

TPPF submitted a request for a copy of the WP report pursuant to the Texas Public Information Act ("PIA"). In response, the School District sought an opinion from the Texas Attorney General that the WP report was not subject to disclosure under the PIA because it was protected by the attorney-client privilege. The Texas Attorney General agreed, and opined that the entirety of the WP report is protected from disclosure by the attorney-client privilege.[2]

TPPF subsequently filed an original petition for writ of mandamus seeking disclosure of the WP report. *See* TEX. GOV'T CODE ANN. § 552.321 (providing for writ of mandamus to compel governmental body to make information available for

[2] Attorney General opinions, although persuasive, are not binding on the courts. *Holmes v. Morales*, 924 S.W.2d 920, 924 (Tex. 1996).

public inspection). The School District answered, and the parties filed cross-motions for summary judgment.

At TPPF's request, the trial court conducted an *in camera* review of the WP report. The court subsequently informed the parties that it had "completed its *in camera* review of the Whitley-Penn Report and affirms the retention of same by [the School District] based upon the privilege as invoked."

The trial court conducted a bench trial on the remaining issue—whether the privilege had been waived. When the trial concluded, the court issued a final written order denying TPPF's application for a writ of mandamus. The trial court also made findings of fact and conclusions of law that included the following:

- Whitley Penn is a "lawyer's representative" and the Report, which is a confidential communication between the Law Firm and Whitley Penn made to facilitate the Law Firm's rendition of legal services is therefore privileged.

- The Highland Park ISD Board of Trustees acts as a body corporate and oversees the management of the District. As a body corporate, the Board of Trustees may act only by majority vote at a meeting duly called and held under the Texas Government Code. As a body corporate, the attorney-client privilege belongs to the Board of Trustees and, as such, the Board of Trustees must take action, by majority vote, to waive the privilege.

- The Whitley Penn Report is subject to the attorney client privilege and, as such, not subject to disclosure and the privilege has not been waived.

TPPF now appeals from the trial court's final order.

II. ANALYSIS

A. Is the WP Report Protected by the Attorney Client Privilege in Whole or in Part?

TPPF argues the WP report is not privileged.[3] Alternatively, TPPF insists that even if the WP report is privileged, the non-privileged information within the report must be disclosed because it is core public information.

1. Completely Privileged

TPPF requested the WP report pursuant to the PIA. *See* TEX. GOV'T CODE ANN. §§ 552.001–.376. The policy behind the Act is reflected in the statement 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." TEX. GOV'T CODE ANN. § 552.001. The Act is to be liberally construed in favor of granting requests for information. TEX. GOV'T CODE ANN. § 552.001(b).

The Act "guarantees access to public information, subject to certain exceptions." *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P.*, 343 S.W.3d 112, 114 (Tex. 2011). The PIA contains a non-exclusive list of categories of public information, TEX. GOV'T CODE ANN. §552.022, as well as certain specific exceptions from required disclosure. *See id.* §§ 552.101–.163. Public information includes

[3] To facilitate meaningful review of the issues raised on appeal, at our request, the trial court provided us with the WP report for *in camera* review.

information that is collected, assembled, or maintained by or for a governmental body. *Id.* § 552.002(a). Upon receiving a request for public information, a governmental body must promptly produce the information for inspection, duplication, or both, *Id*. § 552.221, unless an exception applies. *See In re City of Georgetown*, 53 S.W.3d 328, 331 (Tex. 2001).

Whether information qualifies as "public information" under the Act and whether an exception applies are questions of law. *Univ. of Tex. Sys. v. Franklin Ctr. for Gov't & Pub. Integrity*, 675 S.W.3d 273, 279 (Tex. 2023); *Abbott v. N.E. Indep. Sch. Dist*., 212 S.W.3d 364, 367 (Tex. App.—Austin 2006, no pet.). Consequently, our review is de novo. *Adkisson v. Paxton*, 459 S.W.3d 761, 768 (Tex. App.—Austin 2015, no pet).

If a governmental body considers the requested information exempt from disclosure, and there has been no previous determination about the requested information, the governmental body must submit to the attorney general written comments stating why any claimed PIA exceptions apply and must request an opinion from the attorney general about whether the information falls within the claimed PIA exceptions. TEX. GOV'T CODE ANN. § 552.301; *City of Houston v. Houston Chronicle Publ'g Co*., 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ). The School District did so here, and the attorney general concluded the WP report is protected from disclosure by the attorney-client privilege.

Nonetheless, TPPF argues the WP report is public information that must be disclosed. The PIA identifies eighteen specific types of public information that are referred to as "core public information." *See* TEX. GOV'T CODE ANN. § 522.022; *Tex. Dep't of Pub. Safety*, 34 S.W.3d at 114 n.4; *Abbott v. Dallas Area Rapid Transit*, 410 S.W.3d 876, 880 (Tex. App.—Austin 2003, no pet.). The statute describes the core public information at issue here as follows:

> [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.

TEX. GOV'T CODE ANN. § 522.022(a)(1).

There is no dispute that the WP report is core public information. The question is whether an exception applies in the instant case.

As reflected above, the statute provides that core public information is not excepted from disclosure unless it is "made confidential under [the PIA] or other law." The Texas Supreme Court has held that the Texas Rules of Evidence are "other law" that makes information expressly confidential under Section 522.022. *See In re City of Georgetown*, 53 S.W.3d at 336. The attorney-client privilege governed by Texas Rule of Evidence 503 is the category of confidential information at issue here.

Rule 503 provides that a "client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the

purpose of facilitating the rendition of professional legal services to the client." TEX. R. EVID. 503(b)(1). At the core of the privilege is the notion that the communications are "made for the purpose of facilitating the rendition of professional legal services." *Huie v. DeShazo*, 922 S.W.2d 920, 922 (Tex. 1996) (orig. proceeding). The privilege protects such communications that are between and among the lawyer, the client, and their respective representatives. *In re XL Specialty Ins. Co.*, 373 S.W.3d 46, 49–50 (Tex. 2012).

A communication is "confidential" if it is not intended to be disclosed to third persons other than (1) those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or (2) those reasonably necessary for the transmission of the communication. TEX. R. EVID. 503(a). The presence of third persons during the communication will destroy confidentiality, and communications intended to be disclosed to third parties are not generally privileged. *See id*. Further, the person who holds the privilege—the client—waives it if "the person . . . while holder of the privilege, voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged." TEX. R. EVID. 511(a)(1).

The attorney client privilege exists to facilitate free and open communication between attorneys and their clients. *See Paxton v. City of Dallas*, 509 S.W.3d 247, 259–60 (Tex. 2017); *see also Republic Ins. Co. v. Davis*, 856 S.W.2d 158, 160 (Tex. 1993). The privilege "applies with special force" in the governmental context

because "public officials are duty-bound to understand and respect constitutional, judicial and statutory limitations on their authority; thus, their access to candid legal advice directly and significantly serves the public interest." *Paxton*, 590 S.W.3d at 260.

In the court below, the School District argued and the trial court concluded that Whitley-Penn was a lawyer's representative. Rule 503 defines "lawyer's representative" as "one employed by the lawyer to assist in the rendition of professional legal services." TEX. R. EVID. 503(a)(4)(A)–(B); *XL Specialty Ins. Co*., 373 S.W.3d at 49–50*; see also Univ. of Tex. Sys.*, 675 S.W.3d at 283–87 (because independent firm conducting investigation to assist in the rendition of professional legal services was lawyer's representative, communications were privileged).

The trial court's findings of fact included the following:

> 3. Because the lawyers providing the advice are not accountants and do not have a financial background, and because providing legal advice to the Highland Park ISD required knowledge of a number of financial and accounting issues, the Law Firm engaged Whitley Penn—an accounting and consulting firm—to assist the attorneys in their investigation.
>
> 4. The Law Firm considered Whitley Penn's assistance with analyzing the Seay Tennis Center's internal controls and other accounting procedures and issues to be necessary for it to be able to provide legal advice to the Highland Park ISD.
>
> 5. The Law Firm's engagement letter outlined that it was retaining accounting firm Whitley Penn "to assist [the Law Firm] with an attorney investigation of certain allegations," which is in furtherance of the Law Firm's rendition of legal services to the Highland Park ISD.

TPPF does not challenge these findings. Unchallenged findings of fact are binding on an appellate court unless the contrary is established as a matter of law or if there is no evidence to support the finding. *McGalliard v. Kuhlmann*, 722 S.W.2d 694, 696 (Tex. 1986). Here, the evidence establishes that the School District retained Neal to provide legal advice and Neal retained Whitley-Penn to assist with the financial and accounting aspects of providing such advice. There is no evidence suggesting otherwise. Accordingly, the trial court's binding, unchallenged findings support its conclusion of law that Whitley-Penn was a lawyer's representative. *See Levu GP, LLC v. Pacifico Partners, LTD*, No. 05-16-01167-CV, 2018 WL 4039638, at *5 (Tex. App.—Dallas Aug. 23, 2018, pet. denied) (mem. op.).

TPPF argues that whether Whitley-Penn was acting as a lawyer's representative misses the point because the attorney-client privilege does not apply when the attorney is employed in a non-legal capacity such as an accountant, escrow agent, negotiator, or notary public. In other words, TPPF argues that attorney Neal was acting in some capacity other than as an attorney.

In support of its argument, TPPF relies on *In re Texas Farmers Ins. Exch*., 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) and similar federal court cases. This reliance is misplaced.

In *Farmers*, the evidence established that Scott, an attorney, was acting in the capacity of an insurance investigator rather than as an attorney. *Id*. at 341. The court concluded that communications made in the capacity of investigator were not

privileged. *Id.* Significantly, however, the court noted that "[I]f Scott demonstrates that he communicated to Farmers while acting in his professional capacity as an attorney, such communications would be subject to the attorney-client privilege." *Id.*

The fallacy of TPPF's argument arises from an assumption that an attorney's (or his representative's) investigation of facts somehow forecloses a conclusion that the attorney was providing legal advice. But as illustrated in *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 334 (Tex. App.—Austin 2000, pet. denied), factual investigation and the provision of legal services are not mutually exclusive.

In *Harlandale*, a school district retained an attorney to investigate a grievance and provide legal analysis. *Id.* The court concluded that the attorney functioned as an attorney and therefore her report was exempt from disclosure under the PIA. *Id.* at 334–35. In so concluding, the court held:

> [A]lthough [the attorney] performed an independent investigation and then detailed her findings in a discrete portion of her final report, the investigative fact finding was not the ultimate purpose for which she was hired . . . We therefore conclude the attorney was retained to conduct an investigation in her capacity as an attorney for the purpose of providing legal services and advice.

Id. The court further noted the legitimate concerns of the PIA and the attorney-client privilege and stated, "[I]n weighing these competing concerns we need not surrender the fundamental protections afforded by the privilege to uphold the interests of the Act." *Id*. at 335.

TPPF's proposed application also ignores the express parameters of Rule 503. Rule 503 does not require that a communication be for the primary purpose of soliciting legal advice; the communication need only be made to *facilitate* the rendition of legal services. *See In re Fairway Methanol LLC*, 515 S.W.3d 480, 489 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding) (emphasis added).

In the present case, there is nothing to suggest that attorney Neal was acting in any capacity other than as an attorney retained by the School District to provide professional legal services. Those legal services included investigation. The record reflects that Neal's communications with his attorney representative, Whitley-Penn, were made for the purpose of facilitating the rendition of those legal services. Accordingly, the WP report falls within the scope of the attorney-client privilege. The trial court did not err in concluding that the report was privileged and not subject to disclosure.

2. Partially Privileged

TPPF acknowledges that if Rule 503 applies to a communication, the entire communication is protected from disclosure. But TPPF insists, without supporting authority, that this general rule does not apply to "core public information" under

Section 552.022(a).[4] This argument ignores the express language of the statute and circles back to the principles previously discussed.

TPPF suggests that the text of the PIA contemplates that some portions of a document may be privileged while others are not. This is true for one of the eighteen categories of core public information listed—attorney's fees bills. *See* TEX. GOV'T CODE ANN. § 552.022(a)(16). That section provides that an attorney's bill is public information even if the bill also contains non-discoverable information protected by the attorney-client privilege. *See id.* But the Legislature did not include this exception in any of the other eighteen categories of core public information, including the type at issue here. *See* § 552.022(a)(1)–(18). Instead, the statute provides, without exception, that core public information such as a completed report, audit, evaluation, or investigation is not excepted from disclosure unless made confidential by the PIA or other law. *See* § 552.022(a)(1). We presume that if the Legislature had intended to parse confidential information from non-confidential information for all eighteen categories of core public information, it would have so stated.

Moreover, TPPF provides no guidance for determining how we might isolate non-privileged information from otherwise privileged material, or any realistic way

[4] The School District argues that TPPF did not raise this issue in the trial court and therefore it was not preserved for our review. The record reflects, however, that TPPF generally argued for full or partial disclosure in the briefing it submitted to the trial court.

we might determine what that information might be. Likewise, TPPF offered no such guidance to the trial court. Therefore, on this record, the trial court did not err in concluding that the WP report in its entirety is exempt from disclosure. TPPF's issues concerning privilege are overruled.

B. Was the Attorney-Client Privilege Waived?

At trial, TPPF argued that the White Email referred to the WP report, and therefore the privilege was waived as to the entire report.

Rule 511 states the general rule governing when a privilege is waived by voluntary disclosure. "A person upon whom these rules confer a privilege against disclosure waives the privilege if: . . . the person or a predecessor of the person while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged . . . ." TEX. R. EVID. 511(a). This rule "allows a partial disclosure of privileged material to result in an implied waiver of the privilege as to additional material that has not been disclosed." *In re Alexander*, 580 S.W.3d 858, 869 (Tex. App.—Houston [14th Dist.] 2019, orig. proceeding). Here, the record reflects that there was no disclosure, partial or otherwise.

TPPF contends the White Email "claimed that the [WP report] showed there was 'no mismanagement' and 'no malfeasance' occurring with the Center." This mischaracterizes the White Email by selecting words and phrases from two distinct paragraphs. Significantly, however, neither paragraph mentions the WP report.

TPPF seeks to link use of the word "investigation" in the first paragraph of the email to White's conclusions in the second paragraph of the email. The context and tense of these separate paragraphs, however, do not support TPPF's interpretation.

The first paragraph states:

> As to allegations or rumors about the Seay Tennis Center, please know that the District's attorneys (copied on this email) conducted a thorough investigation, which included reviewing all of the types of documentation that you mention and doing so with expert assistance. Afterwards, the District took all steps it believed were appropriate, including revamping the Seay Tennis Center organization and management structure.

In the second paragraph, the email states, in pertinent part:

> The changes with Seay began almost a year ago and have been in place for some time now. From our perspective, we have fully, finally, and properly addressed any needed significant organizational or management changes. We are managing the Center in a way that we are comfortable is best for the District . . . Further, to address some of the comments in your earlier emails, **there is no mismanagement occurring, there is no malfeasance occurring, and there are no funds being misdirected or mismanaged.**

(Emphasis added).

The trial court found the email does not disclose the contents of the WP report or the legal advice provided by attorney Neal. The record supports this conclusion.

On its face, the email does not expressly mention the WP report or refer to its contents. Although White testified that his reference to "expert assistance" meant the WP report, referring to the fact that the attorneys utilized the report does not equate to White's disclosure of or reliance on its contents. Further, there is no

disclosure of attorney Neal's conclusions about the WP report or any other documents reviewed in the course of the investigation. There is no reference to any legal advice Neal may have given.

The first paragraph referencing the investigation describes past events, including the resolution of any issues with the Center, as evidenced by the past tense of the phrase "the District took all steps it believed were appropriate . . . ." The second paragraph then describes the current state of affairs, as evidenced by use of the present tense phrases "we are managing the Center in a way that we are comfortable is best for the District," and "there is no mismanagement occurring."

The second paragraph does not refer to the investigation, the WP report, or any other documentation the attorneys may have reviewed. Instead, it states White's conclusion about the current state of affairs at the Center, specifically, that "there is no mismanagement occurring, there is no malfeasance occurring, and there are no funds being misdirected or mismanaged." White offers no basis for his conclusion, and there is nothing to suggest that his present conclusion was based on the WP report or the advice of counsel. In fact, White testified that he had never seen the WP report. On this record, there is simply no evidence that the attorney-client privilege attached to the WP report was waived.

TPPF also argues the trial court erred in concluding that the privilege was not waived "because the [School District] Board of Trustees had not officially waived the privilege by majority vote." Although one of the trial court's conclusions stated

that the Board must waive the privilege, the court did not expressly state that this was its basis for concluding the privilege was not waived. Instead, a separate legal conclusion stated only that "the privilege has not been waived." Regardless, because we have concluded that the White Email did not waive the privilege, we need not also consider whether White had the authority to do so. *See* TEX. R. APP. P. 47.1.

TPPF's issues concerning waiver are resolved against it.

C. Did the Trial Court Erroneously Exclude Evidence?

TPPF complains that the trial court refused to admit uncontested evidence, refused to allow White to testify about the context of his email, and refused to allow evidence or testimony regarding communications that prompted the White Email. According to TPPF, "the Judge steadfastly refused to allow the parties to put on their case." The record does not support TPPF's characterization.

When the trial began, counsel for TPPF informed the trial judge that the sole remaining issue was waiver and identified the White Email as the basis for its claim. The trial court instructed TPPF that its examination of the witness it elected to call would be limited to the issue before the court. When TPPF advised that it planned to call the tennis instructor whose resignation letter prompted the investigation of the Center, the judge inquired about the relevance of such testimony to waiver. TPPF could not identify anything. The judge told TPPF:

> I will let you put on a witness solely related to the issue of waiver and past his name and what he does, any testimony that is not related to waiver this court is not going to receive.

TPPF opted to call White as a witness instead of the tennis instructor. During that examination, the court reminded counsel several times that the scope of the testimony was limited to the issue of waiver and the White Email.

It is well-established that a trial judge has broad discretion in determining how to conduct a trial, and he may properly intervene to maintain control in the courtroom, expedite the trial, and prevent what he considers to be a waste of time. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 240–241 (Tex. 2001) (per curiam). The trial judge's effort to focus the trial on the only relevant issue before the court (as identified by counsel for TPPF) does not establish that the court erroneously excluded evidence.

Moreover, to the extent that evidence was excluded, the issue was not preserved for our review. *See* TEX. R. APP. P. 33.1. The Rules of Appellate Procedure and the Rules of Evidence require a party to preserve error regarding a complaint that the party did not have an opportunity to present evidence in the trial court. *Kaur–Gardner v. Keane Landscaping, Inc.*, No. 05-17-00230-CV, 2018 WL 2191925, at *2 (Tex. App.—Dallas May 14, 2018, no pet.) (mem. op.). If evidence is excluded at a bench trial, to preserve error, the party must make an offer of proof, *see* TEX. R. EVID. 103(a)(2), or a bill of exception, *see* TEX. R. APP. P. 33.2.

"To preserve error adequately and effectively, an offer of proof must show the nature of the evidence specifically enough so that the reviewing court can determine its admissibility." *Coleman v. Coleman*, 170 S.W.3d 231, 239 (Tex. App.—Dallas

2005, pet. denied). "The offer of proof serves primarily to enable the reviewing court to assess whether excluding the evidence was erroneous and, if so, whether the error was harmful." *Fletcher v. Minn. Mining & Mfg. Co*., 57 S.W.3d 602, 608 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). An offer of proof allows the trial court to reconsider its ruling in light of the proffered evidence. *Id.*

We cannot determine whether evidence was improperly excluded unless the evidence is included in the record. *Sw. Country Enters., Inc. v. Lucky Lady Oil Co*., 991 S.W.2d 490, 494 (Tex. App.—Fort Worth 1999, pet. denied). The only way the evidence will be included in the record is if the complaining party made an offer of proof or a bill of exception. *Id.*

TPPF did not make an offer of proof or a bill of exception. Accordingly, it failed to create a record that would allow a merits review of its complaint. *See In re C.C.E.*, 530 S.W.3d 314, 322 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (holding party failed to preserve error regarding complaint she did not have an opportunity to present evidence where record did not demonstrate that party requested an opportunity, offered evidence that was excluded, or made an offer of proof or bill of exception); *see also C.S.C.S., Inc. v. Carter*, 129 S.W.3d 584, 594 (Tex. App.—Dallas 2003, no pet.). TPPF's complaint about the exclusion of evidence is resolved against it.

III. CONCLUSION

Having resolved all of TPPF's issues against it, we affirm the trial court's order.

/Dennise Garcia/
DENNISE GARCIA
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

TEXAS PUBLIC POLICY FOUNDATION, Appellant

No. 05-24-00813-CV V.

HIGHLAND PARK INDEPENDENT SCHOOL DISTRICT, Appellee

On Appeal from the 14th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-23-01161.
Opinion delivered by Justice Garcia.
Justices Breedlove and Lewis participating.

In accordance with this Court's opinion of this date, the trial court's order is **AFFIRMED**.

It is **ORDERED** that appellee HIGHLAND PARK INDEPENDENT SCHOOL DISTRICT recover its costs of this appeal from appellant TEXAS PUBLIC POLICY FOUNDATION.

Judgment entered this 16th day of July 2025.

Tab B

Concurring Opinion Filed July 16, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00813-CV

TEXAS PUBLIC POLICY FOUNDATION, Appellant
V.
HIGHLAND PARK INDEPENDENT SCHOOL DISTRICT, Appellee

On Appeal from the 14th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-23-01161

CONCURRING OPINION

Before Justices Garcia, Breedlove, and Lewis
Concurring Opinion by Justice Lewis

Based on the specifics of the case before us and without adopting all of the majority's conclusions, I join the majority's result. I write separately to highlight some dangers and absurdities that can result from an overbroad application of attorney–client privilege protections in the context of investigations. While these concerns are not original, this case well illustrates the reasoning behind the red flags. My hope is that the Supreme Court will provide our courts with guidance that narrows the potential for strategic abuses of a broad application of this sacred protection.

It comes down to this: should the results of a general, factual investigation conducted by a client's attorney be shielded from disclosure where an identical investigation conducted directly by the client would not be?

Here, we are faced with the former type of situation, though not one in which an attorney conducted the inquiry directly. That would prompt a different analysis.[1] Instead, the Law Firm hired a non-lawyer third party, Whitley-Penn, to investigate and provide non-legal expertise that the Law Firm and School District admittedly lacked in certain areas.[2] Whitley-Penn conducted the underlying factual inquiry, prepared the WP report, and provided it to the Law Firm. Then the Law Firm communicated the investigation results to its client.

No one challenges that the Law Firm was retained to provide legal advice. Indeed, as both the majority and School District note, no party presented evidence that attorney Neal was retained in a non-legal capacity or acting outside of his capacity as an attorney for the district.[3] But by choosing to conduct the entire factual

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[1] Courts have held that the attorney–client privilege does not apply to "communications between a client and an attorney where the attorney is employed in a *non-legal* capacity, for instance as an accountant, escrow agency, negotiator, or notary public." *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 332 (Tex. App.—Austin 2000, pet. denied) (emphasis added) (protecting the communications of an attorney acting as an investigator where the attorney "functioned as an attorney" during the course of the investigation); *see also In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana Feb. 18, 1999, orig. proceeding [mand. denied]) ("[T]he privilege does not apply if the attorney is acting in a capacity other than that of an attorney.").

[2] While concerns similar to those expressed herein can arise in the context of an attorney acting directly as an investigator, the distance between investigating and providing legal advice is even more pronounced when a non-lawyer third party conducts the investigation in the area of that non-lawyer's expertise.

[3] I struggle to identify what evidence *could* be presented to assert an attorney's non-legal capacity in a situation such as this—even if the attorney's actions were primarily those that could be rendered by a non-attorney—so long as the attorney and client ascribed an advice component to the attorney's role.

investigation *through* the Law Firm, the School District renders it difficult—perhaps impossible under the broad interpretation questioned herein—to prove that the communication of even the basic revealed facts was not "made to facilitate" legal advice, triggering application of the attorney–client privilege. *See* TEX. R. EVID. 503(b)(1)(B). That being the case, it is hard to envision why any entity would not structure their investigations similarly if they desired to shield the results.

In such a scenario the attorney acts as a pass-through, albeit with a legal-advice filter, for the factual information unearthed in the investigation. If the lawyer is not, for example, an accountant, the lawyer will also pass on (without alteration, though perhaps with commentary) the accountant's recommendations and the results of any financial analyses conducted in the investigation. In such case, the lawyer is placed in the role of a mere conduit, passing on information used for business decisions, not legal advice. Such a broad application of the privilege strays from the privilege's intent. *See, e.g.*, *Tex. Farmers*, 990 S.W. at 341 (explaining that if a "blanket privilege" applied to factual communications, "insurance companies could simply hire attorneys as investigators at the beginning of a claim investigation and claim privilege as to all the information gathered. This is not the intent of the privilege.").

Our Court reviewed the WP report *in camera*, and, in my estimation, the nature of the report does not differ from one that could have resulted from a client's

internal investigation, without a lawyer intermediary.[4] And here, we are not dealing with a private-sector client but a government entity commissioning an investigation funded by taxpayers.

As a point of policy, citizens can benefit from government entities seeking legal advice, and those entities should be able to speak freely with their attorneys. In an effort to avoid disincentivizing those communications, though, we should not also incentivize government entities to structure investigations in a manner that would cloak the factual results from the review of the public that funded them.

While I believe that precedent and the facts of this case necessitate that I follow the majority on the result, this is, in my opinion, a matter on which the Supreme Court's review and redirection is warranted.[5] Accordingly, I respectfully concur.

/Jessica Lewis/
JESSICA LEWIS
JUSTICE

[4] Nothing in this concurrence should be read as describing or implying the contents of the report beyond this description of the overall nature of the report, which is at issue in the privilege analysis.

[5] While a recent case from the Supreme Court provides guidance on related issues, the report produced by the non-lawyer investigator in that case was made public. *See Univ. of Tex. Sys. v. Franklin Ctr. for Gov't & Pub. Integrity*, 675 S.W.3d 273 (Tex. 2023). That and other facts make that case distinguishable from the case currently before this Court. However, many of the concerns raised in Justice Devine's dissent—including concerns regarding the broad interpretation of Rule 503—also apply here.

Tab C

NO. DC-23-01161

TEXAS PUBLIC POLICY FOUNDATION,	§	IN THE DISTRICT COURT
Plaintiff,	§	
v.	§	DALLAS COUNTY, TEXAS
HIGHLAND PARK INDEPENDENT SCHOOL DISTRICT,	§	
Defendant.	§	14TH JUDICIAL DISTRICT

ORDER ON PRODUCTION OF WHITLEY PENN REPORT

The Court has reviewed *in camera* the "Whitley Penn Report," which forms the basis of the action filed by Plaintiff Texas Public Policy Foundation against Defendant Highland Park Independent School District. After reviewing the Whitley Penn report *in camera*, and considering the evidence on file related to that document, the Court is of the opinion that the Whitley Penn Report is subject to the attorney client privilege and not subject to production under the Texas Public Information Act.

It is therefore ORDERED, ADJUDGED AND DECREED that the Whitley Penn Report is not subject to disclosure under the Texas Public Information Act as the Whitley Penn Report is protected by the attorney client privilege.

SIGNED ON this 30 day of April, 2024.

JUDGE PRESIDING

1C

Tab D

DC-23-01161

TEXAS PUBLIC POLICY FOUNDATION	§	**IN THE DISTRICT COURT**
Plaintiff	§	
VS.	§	**14th JUDICIAL DISTRICT**
HIGHLAND PARK INDEPENDENT SCHOOL DISTRICT	§	
Defendants	§	**DALLAS COUNTY, TEXAS**

FINAL JUDGMENT

On the 30th day of April, 2024 came on for trial before the Court the above styled and referenced matter. After considering the Court's ruling establishing the proper interposition of the objection by the Defendants to the production of particular privileged information, this Court is of the opinion that Plaintiff's Application for Writ of Mandamus is not well taken, and should be denied.

All relief sought be Plaintiff is denied. All costs of Court shall be borne by Plaintiff.

It is so Ordered.

Signed 30 April, 2024.

Eric V. Moyé, Presiding Judge

1D

Tab E

CAUSE NO. DC-23-01161

TEXAS PUBLIC POLICY FOUNDATION	§	**IN THE DISTRICT COURT**
Plaintiff	§	
VS.	§	**14th JUDICIAL DISTRICT**
	§	
HIGHLAND PARK INDEPENDENT SCHOOL DISTRICT	§	
Defendants	§	**DALLAS COUNTY, TEXAS**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled Cause came on for trial before the Court without a jury on April 30, 2024. Present were the Plaintiff, Texas Public Policy Foundation (hereinafter sometimes referred to as the "Foundation") and Defendant Highland Park Independent School District (hereinafter sometimes referred to as the "Highland Park ISD" or the "District"), together with their respective attorneys of record.

After considering the pleadings, the evidence, the arguments and briefs from counsel, the Court, in response to a request from Plaintiff, makes its Findings of Fact and Conclusions of Law as follows. To the extent that any testimony or documentary evidence exists in the record which is inconsistent with the Findings contained herein, the Court finds said testimony or evidence to be not persuasive.

FINDINGS OF FACT

1. The Highland Park ISD retained the law firm of Thompson & Knight LLP (the "Law Firm") for the rendition of legal services regarding an attorney investigation of certain allegations involving the Tennis Center. Thompson & Knight LLP subsequently merged with the

law firm of Holland & Knight as of August 1, 2021.

2. The Law Firm was retained to opine on legal issues involved in the District's Seay Tennis Center operations, including the employee handling of the financial operations of the Tennis Center.

3. Because the lawyers providing the advice are not accountants and do not have a financial background, and because providing legal advice to the Highland Park ISD required knowledge of a number of financial and accounting issues, the Law Firm engaged Whitley Penn—an accounting and consulting firm—to assist the attorneys in their investigation.

4. The Law Firm considered Whitley Penn's assistance with analyzing the Seay Tennis Center's internal controls and other accounting procedures and issues to be necessary for it to be able to provide legal advice to the Highland Park ISD.

5. The Law Firm's engagement letter outlined that it was retaining accounting firm Whitley Penn "to assist [the Law Firm] with an attorney investigation of certain allegations," which is in furtherance of the Law Firm's rendition of legal services to the Highland Park ISD.

6. Upon the completion of its work, Whitley Penn produced its findings in a report (the "Report"), which Whitley Penn provided to the Law Firm's attorney Bryan Neal. Attorney Neal used the Report to complete his investigation into the allegations regarding the Tennis Center and to provide legal advice the Highland Park ISD.

7. Neither the Report, nor the contents of the Report have been shared with any non-party, with the exception of certain other attorneys (and certain support staff) at the Law Firm, as well as the Attorney General in connection with responding to the Public Information Act request at issue in this lawsuit. At the time the Law Firm provided the legal advice to Highland Park ISD, it did not provide a copy of the Report to anyone at Highland Park ISD.

8. On March 29, 2021, Mike White, the District's then Assistant Superintendent for Business Services sent an email regarding the Tennis Center. The email stated that "there is no mismanagement occurring, there is no malfeasance occurring, and there are no funds being misdirected or mismanaged. The email did not disclose the contents of the Report, or the legal advice provided by Attorney Neal.

9. On August 22, 2022, the Foundation filed a request under the Texas Public Information Act with the Highland Park ISD seeking a copy of the Whitley Penn Report. In response, on September 21, 2022, the District sought an opinion from the Attorney General that the Report was not subject to disclosure under the Public Information Act because it was protected by the attorney-client privilege.

10. On November 30, 2022, the Open Records Division of the Attorney General determined the Report was not subject to disclosure un the Texas Public Information Act as the Report was protected by the attorney-client privilege.

11. The Whitley Penn Report has not been produced for public viewing. At all times, the Whitley Penn Report has been maintained private and confidential. There has been no voluntary disclosure or consent to disclosure of any significant part of the Whitley Penn Report.

12. On April 12, 2024, Highland Park ISD submitted the Whitley Penn Report, which is the subject of this lawsuit, to the Court for an *in camera* inspection. On April 15, 2024, counsel for the District and TPPF received email correspondence from the Court, which stated "[t]he Court has completed its *in camera* review of the Whitley-Penn Report and affirms the retention of same by the Defendant based upon the privilege as invoked."

13. Any Conclusion of Law more properly deemed a Finding of Fact.

CONCLUSIONS OF LAW

1. Texas law allows public information that is subject to Section 552.022(a) of the Government Code to be withheld from disclosure if the information is held to be confidential under attorney-client privilege.

2. Information is excepted from the requirements of Section 552.021 of the Government Code if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.

3. A "compelling reason" to withhold confidential attorney-client communications exists and, absent waiver, rebuts the presumption that the information protected by the privilege is "subject to required public disclosure."

4. Texas Rule of Evidence 503 provides that "[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: . . . between the client's lawyer and the lawyer's representative."

5. Tex.R.Evid. 503 defines a "lawyer's representative" to include "one employed by the lawyer to assist in the rendition of professional legal services; or an accountant who is reasonably necessary for the lawyer's rendition of professional legal services."

6. Tex.R.Evid. 511(a)(1) provides that a person waives the privilege if the "holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged."

7. Tex.R.Evid. 511 provides that "[a] person upon whom these rules confer a privilege against disclosure waives the privilege if . . . the person or a predecessor of the person while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged."

8. Whitley Penn is a "lawyer's representative" and the Report, which is a confidential communication between the Law Firm and Whitley Penn made to facilitate the Law Firm's rendition of legal services is therefore privileged.

9. The Highland Park ISD Board of Trustees acts as a body corporate and oversees the management of the District. As a body corporate, the Board of Trustees may act only by majority vote at a meeting duly called and held under the Texas Government Code. As a body corporate, the attorney-client privilege belongs to the Board of Trustees and, as such, the Board of Trustees must take action, by majority vote, to waive the privilege.

10. The Whitley Penn Report is subject to the attorney client privilege and, as such, not subject to disclosure and the privilege has not been waived.

11. And Finding of Fact more properly deemed a Conclusion of Law.

Signed this 20 day of May, 2024.

Eric V. Moyé, Presiding Judge

Tab F

Tex. Gov't Code § 552.001

*** This document is current through the 2025 Regular Session of the 89th Legislature bills: sb14, sb2, sb503, sb365, sb569, sb262, sb1058, sb1409, sb1147, sb135, sb1145, 1038, sb1697, sb513, sb1499, sb1809, sb836, sb711, sb29, sb1426, sb897, sb384, sb1706, sb1930, sb1066, sb2065, sb1194, sb304, sb1215, sb599, sb1185, sb1468, sb1738, sb2314, sb1035, sb1062, sb1369, sb1268, sb1341, sb1151, sb1403, sb2066, sb1044, sb1806, sb1619, sb914, sb2034, sb522, sb1106, sb1366, sb1378, sb1415, sb1437, sb1532, sb1963, sb1577,sb2032, sb1197, sb1057, sb1583, sb870, sb879, sb2077, sb65, sb2964, sb765, sb610, sb2204, sb2629, sb412, sb922, sb767, sb372, sb1746, sb2196, sb305, sb783, sb326, sb530, sb769, hb912, sb1967, sb2312, sb463, sb1238, sb1169, sb856, sb855, sb906, sb2231, sb1364, sb929, sb1744, sb1877, sb1998, sb1932, hb1089, hb1244, hb166, hb1672, hb1706, hb2000, hb2018, hb22, hb1399, hb3248, hb3135, hb331, hb2763, hb3093, sb1172, sb1555, sb1464, sb1025, sb1490, sb1418, sb1729, sb1257, sb1557, sb1568, sb771, sb842, sb1841, sb499, sb888, sb616, sb2351, sb2419, sb266, sb2371, sb314, sb2929, sb1786, sb1271, sb1759, sb250, sb2306, hb517, sb1886, sb2004, hb554, sb1023, hb2051, hb3204, hb1109, sb1080, hb334, hb1327, hb2703, hb2884, hb2890, hb21, sb480, sb1921, hb1130, hb2027, hb1950, hb1041, hb1188, hb11, hb5061, hb303, hb431, hb2029, hb48, hb29, hb2663, sb1214, sb1020, sb529, sb207, sb1332, sb1901, sb1537, sb1646, sb2662, hb2692, sb1745, sb2349, sb985, sb2550, sb2774, sb688, sb2776, sb72, sb1267, sb2361, hb116, hb2809, hb1689, hb1238, hb1899, hb1151, sb2420, sb1316, sb703, sb241, sb455, sb2269, sb1245, sb1620, hb126, hb136, sb617, sb2122, sb1143, sb1273, sb1355, sb1422, hb630, sb1351, hb3229, hb142, hb3594, hb1465, hb5238, hb3809, sb901, sb746, hb3700,hb1729, hb3560, hb3611, hb2003, sb1173, hb1261, hb2742, hb3698, hb3307, hb1022, hb4739, sb2141, sb1227, sb1177, sb651, sb920, sb1321, sb1496, sb2112, sb687, hb1620, sb984, hb2768, hb2415, hb767, sb1349, sb1569, sb2284, hb2596, hb210, sb1018, sb992, hb198, sb434, sb1931, sb1895, sb1079, hb1778, sb3037, sb664, sb2124, sb958, sb745, sb927, sb1247, sb2938, sb402, sb1239, sb1759, sb761, sb1248, sb1662, sb2268, sb2303, sb9, hb640, hb1894, hb1105, hb1318, hb1024, hb102, hb5667, hb1106, hb109, hb108, hb1193, hb132, hb1562, hb1584, hb1592, hb1506, hb1445, hb1686, hb1443, hb1606, hb1458, hb148, hb1275, sb40, hb128, hb2513, hb1393, sb1184, hb685, hb3161, hb1403, hb3114, hb1828, hb1851, hb1612, hb1866, hb1734, hb1700, hb1871, hb1723, hb1661, hb2073, hb2025, hb1991, hb2014, hb2026, hb2061, hb1902, hb12, hb1481, hb1633, hb2253, hb2310, hb2254, hb2358, hb247, hb1893, hb2078, hb201, hb1922, hb2001, hb2971, hb1916, hb2306, hb2293, hb2273, hb2282, hb2213, hb2286, hb229, hb2560, hb2529, hb2440, hb2492, hb2564, hb2313, hb2348, hb2355, hb2468, hb2522, hb2434, hb2559, hb2508, hb2495, hb2563, hb4666, hb140, hb1422, hb2350, hb2510, hb2402, hb2467, hb2340, hb150, hb791, hb4076, hb3748, hb2970, sb1008, hb5699, hb3153, hb3159, hb3088, sb1388, hb3211, hb2530, hb2765, sb1493, sb670, hb3505, hb2856, sb1371, hb4809, sb1762, hb4945, hb4643, hb5247, hb4506, hb4687, sb1733, hb3575, hb3803, hb2524, hb5674, hb4454, hb3680m sb963, hb3234, hb4205, hb285, sb739, hb3788, hb2712, hb3250, sb912, sb1951, sb565, hb5342, hb4738, sb1559, sb1804, sb1728,

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Sec. 552.001. Policy; Construction.

(a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, 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. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over

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the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

(b) This chapter shall be liberally construed in favor of granting a request for information.

History

Enacted by *Acts 1993, 73rd Leg., ch. 268 (S.B. 248), § 1*, effective September 1, 1993.

End of Document

3F

Tex. Gov't Code § 552.002

*** This document is current through the 2025 Regular Session of the 89th Legislature bills: sb14, sb2, sb503, sb365, sb569, sb262, sb1058, sb1409, sb1147, sb135, sb1145, 1038, sb1697, sb513, sb1499, sb1809, sb836, sb711, sb29, sb1426, sb897, sb384, sb1706, sb1930, sb1066, sb2065, sb1194, sb304, sb1215, sb599, sb1185, sb1468, sb1738, sb2314, sb1035, sb1062, sb1369, sb1268, sb1341, sb1151, sb1403, sb2066, sb1044, sb1806, sb1619, sb914, sb2034, sb522, sb1106, sb1366, sb1378, sb1415, sb1437, sb1532, sb1963, sb1577,sb2032, sb1197, sb1057, sb1583, sb870, sb879, sb2077, sb65, sb2964, sb765, sb610, sb2204, sb2629, sb412, sb922, sb767, sb372, sb1746, sb2196, sb305, sb783, sb326, sb530, sb769, hb912, sb1967, sb2312, sb463, sb1238, sb1169, sb856, sb855, sb906, sb2231, sb1364, sb929, sb1744, sb1877, sb1998, sb1932, hb1089, hb1244, hb166, hb1672, hb1706, hb2000, hb2018, hb22, hb1399, hb3248, hb3135, hb331, hb2763, hb3093, sb1172, sb1555, sb1464, sb1025, sb1490, sb1418, sb1729, sb1257, sb1557, sb1568, sb771, sb842, sb1841, sb499, sb888, sb616, sb2351, sb2419, sb266, sb2371, sb314, sb2929, sb1786, sb1271, sb1759, sb250, sb2306, hb517, sb1886, sb2004, hb554, sb1023, hb2051, hb3204, hb1109, sb1080, hb334, hb1327, hb2703, hb2884, hb2890, hb21, sb480, sb1921, hb1130, hb2027, hb1950, hb1041, hb1188, hb11, hb5061, hb303, hb431, hb2029, hb48, hb29, hb2663, sb1214, sb1020, sb529, sb207, sb1332, sb1901, sb1537, sb1646, sb2662, hb2692, sb1745, sb2349, sb985, sb2550, sb2774, sb688, sb2776, sb72, sb1267, sb2361, hb116, hb2809, hb1689, hb1238, hb1899, hb1151, sb2420, sb1316, sb703, sb241, sb455, sb2269, sb1245, sb1620, hb126, hb136, sb617, sb2122, sb1143, sb1273, sb1355, sb1422, hb630, sb1351, hb3229, hb142, hb3594, hb1465, hb5238, hb3809, sb901, sb746, hb3700,hb1729, hb3560, hb3611, hb2003, sb1173, hb1261, hb2742, hb3698, hb3307, hb1022, hb4739, sb2141, sb1227, sb1177, sb651, sb920, sb1321, sb1496, sb2112, sb687, hb1620, sb984, hb2768, hb2415, hb767, sb1349, sb1569, sb2284, hb2596, hb210, sb1018, sb992, hb198, sb434, sb1931, sb1895, sb1079, hb1778, sb3037, sb664, sb2124, sb958, sb745, sb927, sb1247, sb2938, sb402, sb1239, sb1759, sb761, sb1248, sb1662, sb2268, sb2303, sb9, hb640, hb1894, hb1105, hb1318, hb1024, hb102, hb5667, hb1106, hb109, hb108, hb1193, hb132, hb1562, hb1584, hb1592, hb1506, hb1445, hb1686, hb1443, hb1606, hb1458, hb148, hb1275, sb40, hb128, hb2513, hb1393, sb1184, hb685, hb3161, hb1403, hb3114, hb1828, hb1851, hb1612, hb1866, hb1734, hb1700, hb1871, hb1723, hb1661, hb2073, hb2025, hb1991, hb2014, hb2026, hb2061, hb1902, hb12, hb1481, hb1633, hb2253, hb2310, hb2254, hb2358, hb247, hb1893, hb2078, hb201, hb1922, hb2001, hb2971, hb1916, hb2306, hb2293, hb2273, hb2282, hb2213, hb2286, hb229, hb2560, hb2529, hb2440, hb2492, hb2564, hb2313, hb2348, hb2355, hb2468, hb2522, hb2434, hb2559, hb2508, hb2495, hb2563, hb4666, hb140, hb1422, hb2350, hb2510, hb2402, hb2467, hb2340, hb150, hb791, hb4076, hb3748, hb2970, sb1008, hb5699, hb3153, hb3159, hb3088, sb1388, hb3211, hb2530, hb2765, sb1493, sb670, hb3505, hb2856, sb1371, hb4809, sb1762, hb4945, hb4643, hb5247, hb4506, hb4687, sb1733, hb3575, hb3803, hb2524, hb5674, hb4454, hb3680m sb963, hb3234, hb4205, hb285, sb739, hb3788, hb2712, hb3250, sb912, sb1951, sb565, hb5342, hb4738, sb1559, sb1804, sb1728,

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Sec. 552.002. Definition of Public Information; Media Containing Public Information.

(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

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(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.

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

(a-2) The definition of "public information" provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

(b) The media on which public information is recorded include:

(1) paper;

(2) film;

(3) a magnetic, optical, solid state, or other device that can store an electronic signal;

(4) tape;

(5) Mylar; and

(6) any physical material on which information may be recorded, including linen, silk, and vellum.

(c) The general forms in which the media containing public information exist include a book, paper, letter, document, e-mail, Internet posting, text message, instant message, other electronic communication, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

(d) "Protected health information" as defined by *Section 181.006, Health and Safety Code*, is not public information and is not subject to disclosure under this chapter.

History

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Enacted by *Acts 1993, 73rd Leg., ch. 268 (S.B. 248), § 1*, effective September 1, 1993; am. *Acts 1995, 74th Leg., ch. 1035 (H.B. 1718), § 2*, effective September 1, 1995; am. *Acts 2013, 83rd Leg., ch. 1204 (S.B. 1368), § 1*, effective September 1, 2013; *Acts 2019, 86th Leg., ch. 1340 (S.B. 944), § 1*, effective September 1, 2019.

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Sec. 552.021. Availability of Public Information.

Public information is available to the public at a minimum during the normal business hours of the governmental body.

History

Enacted by *Acts 1993, 73rd Leg., ch. 268 (S.B. 248), § 1*, effective September 1, 1993; am. *Acts 1995, 74th Leg., ch. 1035 (H.B. 1718), § 2*, effective September 1, 1995.

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Tex. Gov't Code § 552.022

*** This document is current through the 2025 Regular Session of the 89th Legislature bills: sb14, sb2, sb503, sb365, sb569, sb262, sb1058, sb1409, sb1147, sb135, sb1145, 1038, sb1697, sb513, sb1499, sb1809, sb836, sb711, sb29, sb1426, sb897, sb384, sb1706, sb1930, sb1066, sb2065, sb1194, sb304, sb1215, sb599, sb1185, sb1468, sb1738, sb2314, sb1035, sb1062, sb1369, sb1268, sb1341, sb1151, sb1403, sb2066, sb1044, sb1806, sb1619, sb914, sb2034, sb522, sb1106, sb1366, sb1378, sb1415, sb1437, sb1532, sb1963, sb1577,sb2032, sb1197, sb1057, sb1583, sb870, sb879, sb2077, sb65, sb2964, sb765, sb610, sb2204, sb2629, sb412, sb922, sb767, sb372, sb1746, sb2196, sb305, sb783, sb326, sb530, sb769, hb912, sb1967, sb2312, sb463, sb1238, sb1169, sb856, sb855, sb906, sb2231, sb1364, sb929, sb1744, sb1877, sb1998, sb1932, hb1089, hb1244, hb166, hb1672, hb1706, hb2000, hb2018, hb22, hb1399, hb3248, hb3135, hb331, hb2763, hb3093, sb1172, sb1555, sb1464, sb1025, sb1490, sb1418, sb1729, sb1257, sb1557, sb1568, sb771, sb842, sb1841, sb499, sb888, sb616, sb2351, sb2419, sb266, sb2371, sb314, sb2929, sb1786, sb1271, sb1759, sb250, sb2306, hb517, sb1886, sb2004, hb554, sb1023, hb2051, hb3204, hb1109, sb1080, hb334, hb1327, hb2703, hb2884, hb2890, hb21, sb480, sb1921, hb1130, hb2027, hb1950, hb1041, hb1188, hb11, hb5061, hb303, hb431, hb2029, hb48, hb29, hb2663, sb1214, sb1020, sb529, sb207, sb1332, sb1901, sb1537, sb1646, sb2662, hb2692, sb1745, sb2349, sb985, sb2550, sb2774, sb688, sb2776, sb72, sb1267, sb2361, hb116, hb2809, hb1689, hb1238, hb1899, hb1151, sb2420, sb1316, sb703, sb241, sb455, sb2269, sb1245, sb1620, hb126, hb136, sb617, sb2122, sb1143, sb1273, sb1355, sb1422, hb630, sb1351, hb3229, hb142, hb3594, hb1465, hb5238, hb3809, sb901, sb746, hb3700,hb1729, hb3560, hb3611, hb2003, sb1173, hb1261, hb2742, hb3698, hb3307, hb1022, hb4739, sb2141, sb1227, sb1177, sb651, sb920, sb1321, sb1496, sb2112, sb687, hb1620, sb984, hb2768, hb2415, hb767, sb1349, sb1569, sb2284, hb2596, hb210, sb1018, sb992, hb198, sb434, sb1931, sb1895, sb1079, hb1778, sb3037, sb664, sb2124, sb958, sb745, sb927, sb1247, sb2938, sb402, sb1239, sb1759, sb761, sb1248, sb1662, sb2268, sb2303, sb9, hb640, hb1894, hb1105, hb1318, hb1024, hb102, hb5667, hb1106, hb109, hb108, hb1193, hb132, hb1562, hb1584, hb1592, hb1506, hb1445, hb1686, hb1443, hb1606, hb1458, hb148, hb1275, sb40, hb128, hb2513, hb1393, sb1184, hb685, hb3161, hb1403, hb3114, hb1828, hb1851, hb1612, hb1866, hb1734, hb1700, hb1871, hb1723, hb1661, hb2073, hb2025, hb1991, hb2014, hb2026, hb2061, hb1902, hb12, hb1481, hb1633, hb2253, hb2310, hb2254, hb2358, hb247, hb1893, hb2078, hb201, hb1922, hb2001, hb2971, hb1916, hb2306, hb2293, hb2273, hb2282, hb2213, hb2286, hb229, hb2560, hb2529, hb2440, hb2492, hb2564, hb2313, hb2348, hb2355, hb2468, hb2522, hb2434, hb2559, hb2508, hb2495, hb2563, hb4666, hb140, hb1422, hb2350, hb2510, hb2402, hb2467, hb2340, hb150, hb791, hb4076, hb3748, hb2970, sb1008, hb5699, hb3153, hb3159, hb3088, sb1388, hb3211, hb2530, hb2765, sb1493, sb670, hb3505, hb2856, sb1371, hb4809, sb1762, hb4945, hb4643, hb5247, hb4506, hb4687, sb1733, hb3575, hb3803, hb2524, hb5674, hb4454, hb3680m sb963, hb3234, hb4205, hb285, sb739, hb3788, hb2712, hb3250, sb912, sb1951, sb565, hb5342, hb4738, sb1559, sb1804, sb1728,

hb5515, hb609, hb4655, sb2570, hb4668, hb4804, sb627, hb923, sb1241, hb4281, sb1383, sb1816, hb5323, hb4384, hb3923, hb551, hb908, sb1255, hb4224, hb677, sb706, hb4230, hb4490, sb1220, hb3629, hb5129, sb231, hb668, hb5331, sb1952, hb3804, sb971, hb5180, hb2259, hb39, hb4235, hb4395, hb4743, hb5093, hb4795, hb49, sb1283, hb388, hb4396, hb4129, hb4341, hb5394, hb4426, hb4386, sb2143, hb3687, hb742, hb4429, sb523, hb793, hb754, sb1350, hb5033, sb1814, hb4520, hb3806, hb3986, hb3627, sb2185, hb5115, hb4748, hb3463, hb5629, hb3421, hb3424, hb4377, hb3370, hb3486, sb60, hb3425, hb3104, hb45, hb3260, hb4413, hb3711, sb1883, hb4783, hb3092, hb3699, hb2760, hb4264, hb5084, hb3940, sb896, hb5424, hb694, hb3033, hb4529, hb2697, hb4996, hb3016, hb2143, sb1734, hb1533, sb1252, hb5695, hb5698, hb3487, hb519, hb2851, hb3180, hb3464, hb322, hb4163, hb2198, hb1615, hb5688, hb5679, hb3812, hb34, hb621, hb3732, hb5436, hb3749, sb493, hb3228, hb3824, sb2001, hb3441, hb2789, hb3479, sb1267, hb4370, hb367, hb2898, sb2383, hb4449, sb764, hb3928, hb2791, hb2788, hb3010, hb3053, hb4157, hb2713, hb272, hb3833, hb3062, hb2715, hb2593, hb2607, hb2674, hb3510, hb3041, hb4063, hb4219, hb2960, hb2761, hb3254, hb5308, hb4044, b3057, sb865, sb995, hb2620, hb4360, hb2516, hb2757, hb5149, hb2457, hb2187, hb3805, hb4226,sb57, sb612, sb75, sb467, sb519, sb331, sb3053, sb401, sb3052, hb2240, hb4894,hb4202, sb2786, sb2801, sb263, sb2544, sb2569, sb257, sb24, sb2366, sb226, sb2398, sb2177, sb2148, sb21, hb1629, hb713, hb3112, hb2080, hb4211, hb5656, hb3071, hb824, hb252, hb5646, hb1868, hb1566, sb1242, hb5652, hb145, hb4903, hb300, hb4214, hb20, hb3546, hb4350, hb27, hb3372, hb549, sb1494, sb2448, sb2332, sb2145, sb2180, hb144, hb18, sb1547, sb1121, sb1376, sb1055,hb117, hb101, hb1178, hb4361, hb3783, hb1532, hb5665, hb1191, sb6, hb43, hb6, hb5650, sb4, hb3810, hb3348, sb860, sb2900, sb1758, sb1732, sb2055, sb1957, sb1856, hb1211, hb138, hb4690, hb2488. ***

Sec. 552.022. Categories of Public Information; Examples.

(a) Without limiting the amount or kind of information that is public information under this chapter, the 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;

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(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;

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

(4) the name of each official and the final record of voting on all proceedings in a governmental body;

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;

(6) the name, place of business, and the name of the municipality to which local sales and use taxes are credited, if any, for the named person, of a person reporting or paying sales and use taxes under Chapter 151, Tax Code;

(7) a description of an agency's central and field organizations, including:

(A) the established places at which the public may obtain information, submit information or requests, or obtain decisions;

(B) the employees from whom the public may obtain information, submit information or requests, or obtain decisions;

(C) in the case of a uniformed service, the members from whom the public may obtain information, submit information or requests, or obtain decisions; and

(D) the methods by which the public may obtain information, submit information or requests, or obtain decisions;

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures;

(9) a rule of procedure, a description of forms available or the places at which forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations;

(10) a substantive rule of general applicability adopted or issued by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency;

(11) each amendment, revision, or repeal of information described by Subdivisions (7)—(10);

(12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;

(13) a policy statement or interpretation that has been adopted or issued by an agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public;

(15) information regarded as open to the public under an agency's policies;

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege;

(17) information that is also contained in a public court record; and

(18) a settlement agreement to which a governmental body is a party.

(b) A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, unless the category of information is confidential under this chapter or other law.

History

Enacted by *Acts 1993, 73rd Leg., ch. 268 (S.B. 248), § 1*, effective September 1, 1993; am. *Acts 1995, 74th Leg., ch. 1035 (H.B. 1718), § 3*, effective September 1, 1995; am. *Acts 1999, 76th Leg., ch. 1319 (S.B. 1851), § 5*, effective September 1, 1999; am. *Acts 2011, 82nd Leg., ch. 1229 (S.B. 602), § 2*, effective September 1, 2011.

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Tab G

Tex. Evid. R. 503

The State and Federal rules are current through July 29, 2025. Local District rules are updated periodically throughout the year.

TX - Texas Local, State & Federal Court Rules > ***TEXAS RULES OF EVIDENCE*** > ***Article V. Privileges***

Rule 503. Lawyer-Client Privilege.

(a) Definitions. In this rule:

(1) A "client" is a person, public officer, or corporation, association, or other organization or entity — whether public or private — that:

(A) is rendered professional legal services by a lawyer; or

(B) consults a lawyer with a view to obtaining professional legal services from the lawyer.

(2) A "client's representative" is:

(A) a person who has authority to obtain professional legal services for the client or to act for the client on the legal advice rendered; or

(B) any other person who, to facilitate the rendition of professional legal services to the client, makes or receives a confidential communication while acting in the scope of employment for the client.

(3) A "lawyer" is a person authorized, or who the client reasonably believes is authorized, to practice law in any state or nation.

(4) A "lawyer's representative" is:

(A) one employed by the lawyer to assist in the rendition of professional legal services; or

(B) an accountant who is reasonably necessary for the lawyer's rendition of professional legal services.

(5) A communication is "confidential" if 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.

(b) Rules of Privilege.

(1) General Rule. 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.

(2) Special Rule in a Criminal Case. In a criminal case, a client has a privilege to prevent a lawyer or lawyer's representative from disclosing any other fact that came to the knowledge of the lawyer or the lawyer's representative by reason of the attorney-client relationship.

(c) Who May Claim. The privilege may be claimed by:

(1) the client;

(2) the client's guardian or conservator;

(3) a deceased client's personal representative; or

(4) the successor, trustee, or similar representative of a corporation, association, or other organization or entity — whether or not in existence.

The person who was the client's lawyer or the lawyer's representative when the communication was made may claim the privilege on the client's behalf — and is presumed to have authority to do so.

(d) Exceptions. This privilege does not apply:

(1) Furtherance of Crime or Fraud. If the lawyer's services were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud.

(2) Claimants Through Same Deceased Client. If the communication is relevant to an issue between parties claiming through the same deceased client.

(3) Breach of Duty By a Lawyer or Client. If the communication is relevant to an issue of breach of duty by a lawyer to the client or by a client to the lawyer.

(4) Document Attested By a Lawyer. If the communication is relevant to an issue concerning an attested document to which the lawyer is an attesting witness.

(5) Joint Clients. If the communication:

(A) is offered in an action between clients who retained or consulted a lawyer in common;

(B) was made by any of the clients to the lawyer; and

(C) is relevant to a matter of common interest between the clients.

End of Document

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Tex. Evid. R. 511

The State and Federal rules are current through July 29, 2025. Local District rules are updated periodically throughout the year.

TX - Texas Local, State & Federal Court Rules > ***TEXAS RULES OF EVIDENCE*** > ***Article V. Privileges***

Rule 511. Waiver by Voluntary Disclosure.

(a) General Rule.

A person upon whom these rules confer a privilege against disclosure waives the privilege if:

(1) the person or a predecessor of the person while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter unless such disclosure itself is privileged; or

(2) the person or a representative of the person calls a person to whom privileged communications have been made to testify as to the person's character or character trait insofar as such communications are relevant to such character or character trait.

(b) Lawyer-Client Privilege and Work Product; Limitations on Waiver.

Notwithstanding paragraph (a), the following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the lawyer-client privilege or work-product protection.

(1) Disclosure Made in a Federal or State Proceeding or to a Federal or State Office or Agency; Scope of a Waiver. When the disclosure is made in a federal proceeding or state proceeding of any state or to a federal office or agency or state office or agency of any state and waives the lawyer-client privilege or work-product protection, the waiver extends to an undisclosed communication or information only if:

(A) the waiver is intentional;

(B) the disclosed and undisclosed communications or information concern the same subject matter; and

(C) they ought in fairness to be considered together.

(2) Inadvertent Disclosure in State Civil Proceedings. When made in a Texas state proceeding, an inadvertent disclosure does not operate as a waiver if the holder followed the procedures of *Rule of Civil Procedure 193.3(d)*.

(3) Controlling Effect of a Court Order. A disclosure made in litigation pending before a federal court or a state court of any state that has entered an order that the privilege or protection is not waived by disclosure connected with the litigation pending before that court is also not a waiver in a Texas state proceeding.

(4) Controlling Effect of a Party Agreement. An agreement on the effect of disclosure in a state proceeding of any state is binding only on the parties to the agreement, unless it is incorporated into a court order.

End of Document

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Tab H

NO. DC-23-01161

TEXAS PUBLIC POLICY FOUNDATION, Plaintiff, v. HIGHLAND PARK INDEPENDENT SCHOOL DISTRICT, Defendant.	§ § § § § § § § § § §	IN THE DISTRICT COURT DALLAS COUNTY, TEXAS 116TH JUDICIAL DISTRICT

STATE OF TEXAS)
)
COUNTY OF DALLAS)

AFFIDAVIT OF BRYAN P. NEAL

Before me, the undersigned authority, on this day personally appeared Bryan P. Neal, who being by me first duly sworn, did on oath depose and say as follows:

1. My name is Bryan P. Neal. I am over the age of eighteen and am competent to make the statements in this Affidavit. I have personal knowledge of the matters covered by this Affidavit.

2. I am a partner in the Dallas office of the law firm of Holland & Knight LLP ("HK") and have been with HK since August 1, 2021. Before that date, I was a partner in the Dallas office of the law firm of Thompson & Knight LLP ("TK"), where I worked since 1993. HK merged with TK effective August 1, 2021.

3. I am Board Certified in Labor and Employment Law and Civil Appellate Law by the Texas Board of Legal Specialization. I have represented Highland Park Independent School District ("HPISD") in employment and school law-related matters for approximately twenty years.

4. In 2019, I began providing legal advice to HPISD regarding legal issues involved in certain aspects of the operations of the Seay Tennis Center, including the employee handling of

the financial operations of the Seay Tennis Center. The Seay Tennis Center is a tennis facility owned and operated by HPISD. I believe that I also have provided some legal advice to HPISD on matters arising out of the Seay Tennis Center before 2019, but the matters discussed below relate to the work I did beginning in 2019.

5. Because I am not an accountant and do not have a financial background, and because providing legal advice to HPISD required knowledge of a number of financial and accounting issues, TK engaged Whitley Penn, LLP ("Whitley Penn")—an accounting and consulting firm—to assist me in investigating potential legal concerns related to the financial and accounting aspects of the Seay Tennis Center's operations. I considered Whitley Penn's assistance with analyzing the Seay Tennis Center's internal controls and other accounting procedures and issues to be necessary for me to be able to provide legal advice to HPISD. A true and correct copy of the engagement letter between TK and Whitley Penn is attached as Exhibit 1.

6. At the conclusion of Whitley Penn's work, it provided a report to me summarizing its findings regarding financial aspects of the Seay Tennis Center's operations (the "Report"). The Report was a communication from Whitley Penn to me only. The Report included findings as to the Seay Tennis Center employees' management of finances and adherence to financial controls, as well as recommendations related to the Seay Tennis Center's financial operations going forward. I used the Report to complete my investigation into the allegations regarding the Seay Tennis Center and to provide legal advice to HPISD.

7. Neither the Report, nor the contents of the Report, have been shared with any non-party, with the exception of certain other attorneys (and certain support staff) at TK and now HK, as well as the Office of the Attorney General in connection with responding to the Public Information Act request at issue in this lawsuit. At the time I provided the legal advice to HPISD, I did not provide a copy of the Report to anyone at HPISD.

8. As required by law, HPISD provided a copy of the report to the Texas Attorney General's office to obtain a ruling that the Report was not subject to disclosure under the Public Information Act, Chapter 552 of the Texas Government Code. A true and correct copy of HPISD's letter to the Attorney General, less its exhibits, is attached as Exhibit 2.

9. The Texas Attorney General's office issued a letter with its findings regarding the Report. A true and correct copy of that letter is attached as Exhibit 3.

Dated: February 6, 2024.

Bryan P. Neal

SWORN TO AND SUBSCRIBED BEFORE ME this 6 day of February, 2024, to certify which witness my hand and seal of office.

Notary Public In and for the State of Texas

My Commission Expires:

ELIA BUSTILLOS
Notary Public, State of Texas
Comm. Expires 09-22-2026
Notary ID 131425698

Tab I

EXHIBIT 1

whitleypenn

Dallas Office
8343 Douglas Avenue
Suite 400
Dallas, Texas 75225
214.393.9300 Main

whitleypenn.com

August 6, 2019

Bryan P. Neal, Partner
Thompson and Knight LLP
One Arts Plaza
1722 Routh Street
Suite 1500
Dallas, Texas 75201

Re: Highland Park ISD

Dear Mr. Neal:

Whitley Penn is pleased to have been retained by your firm, Thompson & Knight LLP, on behalf of your client, Highland Park Independent School District (referred to as the "client" or "HPISD"), to assist you with an attorney investigation of certain allegations.

We understand that we are acting as a representative of you in your role of providing legal advice to the client, as well as addressing anticipated litigation that may arise related to the allegations at issue, and that our role therefore will be subject to the attorney/client and work product privileges. Accordingly, any information we obtain in connection with this engagement or that we develop or communicate to you will be regarded as confidential and will not be disclosed to any third party except upon express authorization by you or an order from a court. Please further refer to the attached Privacy Policy.

Although they may change somewhat through mutual discussion, our primary responsibilities will be to work with you to (1) review documentation concerning the conduct of certain employees with respect to financial matters related to the Seay Tennis Center (STC); (2) work with you to interview, or consult as to the topics of interviews to be conducted by you or others of, certain HPISD employees or former employees associated with STC; and (3) develop the report described below.

Whitley Penn is not licensed to practice law; we will not give legal advice. Unless requested and covered under a separate engagement letter, we will not perform an audit or accounting review, or prepare compilations on any financial data for any business entities related to this engagement.

We will document the results of our findings in a written report directed only to you and marked "CONFIDENTIAL." It is the parties' intention that the report be and remain privileged. We understand that the applicable legal privileges are subject to waiver and can be challenged in

court and that it is therefore possible that the report would be disclosed at some point, though that is not the present intention. In light of that possibility, we will make it clear in our report that the findings, opinions, and other statements in the report are intended for the sole and exclusive use of you and the client and are not to be relied on by any third party.

Neither party anticipates that we will provide testimony concerning the report or our work under this engagement. Should that change we will discuss the terms of such testimony and document any needed modification of this engagement.

HPISD will be responsible for paying our fees for all services performed in connection with this engagement. Invoices will be directed to you at Thompson & Knight LLP and may at your option be paid directly by Thompson & Knight LLP or forwarded by you to the client for direct payment by the client. We agree to send invoices to you by e-mail to facilitate the process. Further, if we are directed to begin any work prior to the date this engagement letter is signed, the client responsible for the payment of those fees. Following the commencement of work on this project, fees and expenses will be billed monthly and are due upon presentation of statements.

In investigatory work, estimating future costs and expenses is difficult. If we provide a budget of fees and expenses, it is only an estimate. Our work will be billed per hour at the professional fee rate effective at the time work is being performed. The current hourly rates range from $170 to $445 subject to review and adjustments periodically. In addition to this hourly fee, direct out of pocket expenses, including credit card and wire fees, will be billed at cost. Failure to make the payments required by this agreement, or failure by us, you, and/or your client to comply with the terms of this agreement will release one another from this agreement and any further work on your clients' behalf. The client will remain responsible for any unpaid balance.

All outstanding invoices must be paid before we issue or release our final report. In the event our report is issued and released without full payment of invoices and requested retainers, such is not a waiver to right to full payment of all funds due. Upon release of our report the client hereby consents to pay in full all accrued charges. If for any reason the engagement is terminated prior to its consummation and we are requested to terminate work, then our fee shall not be less than our total time and costs at the normal rate for such projects, plus out-of-pocket expenses.

All payments are due as of the billing date shown on the monthly statements, and are payable upon presentation in Dallas County. A 1% monthly late charge will be added to all accounts thirty days or more past due. Any payments on past-due statements shall be first applied to the oldest outstanding statement, including any due and unpaid interest.

If at any time during the course of this engagement a payment is more than forty-five days past due, we may discontinue work until such account is current, terminate the engagement (which will still require the payment in full for our services), or require a signature on a promissory note to secure the payment of any outstanding balance. Your client must agree to perform any and all obligations on such a promissory note as part of this engagement.

In the unlikely event differences concerning our services or fees should arise that are not resolved by mutual agreement, to facilitate judicial resolution and save time and expense of all parties, Thompson and Knight LLP and/or Highland Park ISD and Whitley Penn agree not to demand a trial by jury in any action, proceeding, or counterclaim arising out of or relating to our services and fees for this engagement. Any controversy, dispute, or questions arising out of or in connection with this agreement or our engagement shall be determined by arbitration in Dallas County, Texas (or other mutually agreed county within Texas) conducted in accordance with the rules of the American Arbitration Association, and any decision rendered by the American Arbitration Association shall be binding on both parties to this agreement. The costs of any arbitration shall be borne equally by the parties. Any and all claims in arbitration relating to or arising out of this contract/agreement shall be governed by the laws of the State of Texas and to the extent any issue regarding the arbitration is submitted to a court, including the appointment of arbitrators or confirmation of an award, the District courts in Dallas County shall have exclusive jurisdiction. Any action arising out of this agreement or the services provided shall be initiated within two years of the service provided.

This letter replaces and supersedes any previous proposals, correspondence, and understanding, whether written or oral. The agreement contained in this engagement letter shall survive the completion or termination of this engagement. This agreement is binding and states the full agreement, unless amended in writing signed by both parties.

Either you, your client, or our firm may terminate this engagement at any time upon written notice. In the event of termination, we will be compensated for our time and fees incurred up to the date of termination.

If these terms and conditions are acceptable to you and/or your client, please confirm our agreement by signing and returning a copy of this letter. Should you have any questions regarding our proposed services, please do not hesitate to contact us at (214) 393-9430.

Your signature below is authorization for us to proceed under the terms of this proposal.

Sincerely yours,

Whitley Penn LLP

(✓) HPISD accepts responsibility for the payment of Whitley Penn fees under this engagement letter.

ACCEPTED this 7 day of August, 2019.

Law Firm Acceptance:

Attorney Name: Bryan P. Neal

Signature: Bryan P. Neal

Title: Partner

Law Firm: Thompson & Knight LLP

Client Acceptance:

Client Name: MIKE WAITE

Signature:

Privacy Policy

CPAs, like all providers of personal financial services, are now required by law to inform their clients of their policies regarding privacy of client information. CPAs have been, and continue to be, bound by professional standards of confidentiality that are even more stringent than those required by law. Therefore, we have always protected your right to privacy.

Types of Nonpublic Personal Information We Collect

We collect nonpublic personal information about you that is provided to us by you or obtained by us with your authorization.

Parties to Whom We Disclose Information

For current and former clients, we do not disclose any nonpublic personal information obtained in the course of our practice except as required or permitted by law. Permitted disclosures include, for instance, providing information to our employees, and in limited situations, to unrelated third parties who need to know that information to assist us in providing services to you. In all such situations, we stress the confidential nature of information being shared. Unless otherwise noted, we may distribute information to you via facsimile or e-mail to the numbers and addresses provided to us by you.

Protecting the Confidentiality and Security of Current and Former Clients' Information

We retain records relating to professional services that we provide so that we are better able to assist you with your professional needs and, in some cases, to comply with professional guidelines. In order to guard your nonpublic personal information, we maintain physical, electronic and procedural safeguards that comply with professional standards.

Disposing of Confidential Current and Former Clients' Information

We engage the services of a document destruction company for the shredding of hard copies of confidential documents and information. Additionally, we delete electronic data files that have been retained in accordance with our record retention policy.

****

Your privacy, our professional ethics, and the ability to provide you with quality financial services are very important to us.

Whitley Penn

Tab J

10:05:11 THE COURT: Counsel?
MR. TOWNSEND: But --
THE COURT: Counsel?
MR. TOWNSEND: Yes.
10:05:15 THE COURT: I'm unaccustomed to lawyers who argue with me after I've made a ruling. I have made a ruling and I have made it lucid. The issue that you've raised is waiver. The document that you say establishes waiver is Plaintiff's Exhibit 8 which is in
10:05:36 evidence.
I have instructed you that you will restrict your examination to this. I do not need context, I do not need background. This document either --
10:05:51 Shh. Be still, please, in the back, ladies. Thank you very much.
-- you will either establish that the District waived its privilege via this document or not, and that's it.
10:06:06 MR. TOWNSEND: Yes, Your Honor.
Q. (BY MR. TOWNSEND) In the second paragraph you mentioned District attorneys. Are those attorneys at Thompson & Knight which now Holland & Knight?
A. Yes, sir, I think so. Bryan Neal.
10:06:34 Q. Who's cc'd at the top of this e-mail?

10:06:37 A. Yes.
Q. You also mentioned "expert assistance". You were -- Were you referring to Whitley Penn when you mentioned "expert assistance"?
10:06:46 A. Yes.
Q. Were you aware of the Whitley Penn Report when you wrote this e-mail?
A. I was aware of it.
Q. How were you aware of the Whitley Penn Report?
10:06:59 THE COURT: It doesn't matter how he was aware of it; he's aware of it.
MR. TOWNSEND: Thank you, Your Honor.
Q. (BY MR. TOWNSEND) Were you aware of the conclusion of the Whitley Penn Report?
10:07:14 A. I had discussions with legal counsel about the conclusions he drew from the report.
Q. At the bottom of the e-mail you say that "there is no mismanagement occurring."
Is that what you drew from your
10:07:38 conversations about the Whitley Penn Report?
THE COURT: That's inappropriate. That violates the privilege and my order. You may not ask that question.
MR. TOWNSEND: Yes, Your Honor.
10:07:52 THE COURT: Normally you ask that about

Tab K

EXHIBIT 7

[redacted]

From: Michael White <WhiteM@HPISD.ORG>
Sent: Monday, March 29, 2021 12:10 PM
To: [redacted]
Cc: Neal, Bryan P.; Brenda West; Thomas Trigg
Subject: Follow Up - Seay Tennis Center

Mr. [redacted]

I am responding on behalf of the Administration to your recent emails to Board President Jim Hitzelberger. As you know, I am the Administration official charged by the Superintendent with direct oversight of the Seay Tennis Center. I believe that we have previously discussed your concerns in our lengthy phone conversations, but I will attempt here to respond to the points mentioned in your recent emails.

As to allegations or rumors about the Seay Tennis Center, please know that the District's attorneys (copied on this email) conducted a thorough investigation, which included reviewing all of the types of documentation that you mention and doing so with expert assistance. Afterwards, the District took all steps it believed were appropriate, including revamping the Seay Tennis Center organization and management structure. If there are additional actions that you might have desired or expected but that did not occur, it is because we did not think they were the best approach.

The changes with Seay began almost a year ago and have been in place for some time now. From our perspective, we have fully, finally, and properly addressed any needed significant organizational or management changes. We are managing the Center in a way that we are comfortable is best for the District. As always, there may be adjustments made as we become more accustomed to the new structure, but as of now we believe we are where we need to be. Further, to address some of the comments in your earlier emails, there is no mismanagement occurring, there is no malfeasance occurring, and there are no funds being misdirected or mismanaged.

We do appreciate the interest by you and others in the Seay Tennis Center and hope you will trust that the management decisions we have made are what we believe are in the best interests of the District.

Thanks,

Mike White, RTSBA
Assistant Superintendent for Business Services
Highland Park ISD
7015 Westchester Drive
Dallas, TX 75205
(214) 780-3017 Work
(972) 533-3428 Cell

Tab L

KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2022

Ms. Meghan McCaig
Counsel for the Highland Park Independent School District
Holland & Knight, L.L.P.
1722 Routh Street, Suite 1500
Dallas, Texas 75201-2532

OR2022-36895

Dear Ms. McCaig:

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# 982861 (HPISD No. 1TPPF).

The Highland Park Independent School District (the "district"), which you represent, received a request for specified reports during a defined period of time. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion that the information at issue has previously been made available to the public. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental

[1] We note, and you acknowledge, the district did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the attorney-client privilege encompassed by section 552.107 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352; *see also Paxton v. City of Dallas*, 509 S.W.3d 247 (Tex. 2017).

body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). The requestor asserts the district has previously released the information at issue. However, we note section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. Upon review, we have no indication the information at issue has been previously released in its exact form to any members of the public. Therefore, we find section 552.007 is inapplicable to the information at issue and we will address the argument against its disclosure.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, as follows:

> [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[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed report subject to section 552.022(a)(1). The district must release this information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although you raise section 552.107 of the Government Code for the information at issue, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the district may not withhold the information at issue under section 552.107. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information expressly confidential for the purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will consider your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the submitted information.

Texas Rule of Evidence 503(b)(1) provides the following:

> 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 it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must (1) show 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 the communication is confidential by explaining it was not intended to be disclosed to third persons and it was made in furtherance of the rendition of professional legal services to the client. Upon a 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). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You assert the submitted information was prepared by a representative of the district's outside counsel and was communicated to district officials in their capacities as clients. You state the information at issue was communicated in furtherance of the rendition of professional legal services to the district. You also state the information at issue was intended to be, and has remained, confidential. Upon review, we find you have demonstrated applicability of the attorney-client privilege to the submitted information. *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 purposes of providing legal service and advice). Thus, the district may withhold the submitted information pursuant to rule 503 of the Texas Rules of Evidence.

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 https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jxd

Ref: ID# 982861

c: Requestor

Automated Certificate of eService

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Matthew Chiarizio on behalf of Matthew Chiarizio
Bar No. 24087294
mchiarizio@texaspolicy.com
Envelope ID: 105120203
Filing Code Description: Petition
Filing Description:
Status as of 9/3/2025 7:43 AM CST

Case Contacts

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