



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 18, 2015

Ms. June Harden
Assistant Attorney General
Public Information Coordinator's Office
General Counsel Division
Office of the Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

OR2015-12138

Dear Ms. Harden:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. This request was originally received by the Open Records Division of this office and assigned ID# 568447. Preparation of the ruling has been assigned to the Opinion Committee of this office.

You explain that the Office of the Attorney General (the "OAG") received a request for documents in 2014 (Public Information Request No. 14-40412). The OAG released most of the responsive information but sought a ruling regarding whether it could withhold certain responsive documents. Subsequently, the OAG issued Open Records Letter No. 2015-00001 (2015), allowing the OAG to withhold the records it submitted for a ruling. The OAG has now received a request for all the records related to the request for a ruling. You state that the OAG will again release the records it had previously released in response to Public Information Request No. 14-40412 and that it will withhold documents in accordance with Open Records Letter No. 2015-00001. You assert that the remaining portion of the ruling file is excepted from public disclosure under section 552.107(1) of the Government Code. You also assert an additional exception to disclosure under section 552.111 of the Government Code with respect to specific documents. We have considered the exceptions you claim and reviewed the information you have submitted under the tab marked "Exhibit B."

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Tex. Att’y Gen. ORD-676 (2002) at 6-7. First, a governmental body must demonstrate that “the information constitutes or documents a communication.” *Id.* at 7. Second, the communication must have been made “to facilitate the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *See In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding), mand. denied, 12 S.W.3d 807 (Tex. 2000) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not satisfy this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. TEX. R. EVID. 503(b)(1)(A)-(E). A governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those . . . to whom disclosure is made to further the rendition of professional legal services to the client [or those] reasonably necessary to transmit the communication.” *Id.* 503(a)(5).

Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding [mand. denied]). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (orig. proceeding) (privilege extends to “entire communication, including facts contained therein”).

You state that the documents within Exhibit B include e-mails between OAG attorneys and staff, drafts of a letter ruling, and internal ORD tracking sheets. You assert that all of the documents constitute or reveal confidential communications between privileged parties that were made for the purpose of providing professional legal services to the OAG. You also state that these communications were not intended to be disclosed and have not been disclosed to non-privileged parties. In particular, you state that the tracking sheets are used in the process of drafting, reviewing, editing, and revising draft letters rulings before their issuance in final form. You state that because the tracking sheets are circulated with the draft

and are used by the attorneys to communicate their legal advice and opinions, they are part of the communications between the attorneys.

Based on your representations and our review, we find that all of the documents within Exhibit B constitute attorney-client communications made in furtherance of the rendition of legal services. Therefore, we conclude that the OAG may withhold the documents in their entirety under section 552.107(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Becky P. Casares
Assistant Attorney General
Opinion Committee

BPC/sdk

Ref: ID# 568447

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling for this information is dispositive, we need not address your remaining argument against disclosure for this information.