



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 17, 2015

Ms. Cara Leahy White  
Counsel for the Town of Annetta  
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.  
6000 Western Place, Suite 200  
I-30 at Bryant-Irvin Road  
Fort Worth, Texas 76107

OR2015-26580

Dear Ms. White:

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# 591399.

The Town of Annetta (the "town"), which you represent, received a request for (1) all maps or physical depictions of the territorial limits of the town since its incorporation; (2) the original order of the Parker County Commissioner's Court incorporating the town, including any attachments or exhibits; (3) specified town ordinances along with any attachments or exhibits; and (4) all information reviewed by the town relating to a specified determination on a specified date. You state you will release some information. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code and protected by copyright law. We have considered your arguments and reviewed the submitted information.

Section 552.107(1) of the Government Code protects information coming 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. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "to facilitate the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative

is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state Exhibit B-1 consists of communications between the town and the town’s attorneys and attorney representatives made in furtherance of the rendition of professional legal services. You state the communications were intended to be and have remained confidential. Upon review, we find you have demonstrated the applicability of the attorney-client privilege to the communications in Exhibit B-1. Therefore, the town may generally withhold Exhibit B-1 under section 552.107(1) of the Government Code. However, we note some of the otherwise privileged e-mail strings include an e-mail from the requestor, who is a non-privileged party. Furthermore, if this e-mail is removed from the e-mail strings and stands alone, it is responsive to the instant request. Therefore, if the town maintains this non-privileged e-mail, which we have marked, separate and apart from the otherwise privileged e-mail strings in which it appears, then the town may not withhold the non-privileged e-mail under section 552.107(1) of the Government Code.

You state Exhibit B-2 may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In

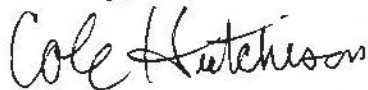
making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the town may generally withhold Exhibit B-1 under section 552.107(1) of the Government Code. However, if the town maintains the non-privileged e-mail, which we have marked, separate and apart from the otherwise privileged e-mail strings in which it appears, then the town may not withhold the non-privileged e-mail under section 552.107(1) of the Government Code. The town must release the remaining information to the requestor; however, any information subject to copyright may be released only in accordance with copyright law.

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

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

Sincerely,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 591399

Enc. Submitted documents

c: Requestor  
(w/o enclosures)