



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 16, 2016

Ms. June B. Harden
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2016-11238

Dear Ms. Harden:

You ask whether certain information is subject to required public disclosure under the Public Information Act ("PIA"), chapter 552 of the Government Code. This request was originally received by the Open Records Division ("ORD") of this office and assigned ID# 610497. Preparation of the ruling has been assigned to the Opinion Committee of this office.

The Office of the Attorney General ("OAG") received a PIA request for specified correspondence between the City of Houston and the OAG and all related materials and correspondence. You state that the Office of the Attorney General ("OAG") will release most of the requested information. You further state that a few of the responsive records reveal the substance of the information that was submitted to ORD under section 552.301(e)(1)(D) of the Government Code and therefore must be withheld in accordance with section 552.3035. *See* TEX. GOV'T CODE §§ 552.301(e)(1)(D), .3035. You assert that the remainder of the responsive information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107(1) 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 for the purpose of facilitating “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, such as acting as an administrator, investigator, or manager. *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) (stating that the attorney-client “privilege does not apply if the attorney is acting in a capacity other than that of an attorney”). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). 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, 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) (stating that the privilege extends to an “entire communication, including facts contained therein”).

You state that the information submitted under Exhibit B constitutes or reveals internal communications between ORD attorneys and personnel, including emails and notes, internal ORD tracking sheets, and a draft letter ruling. You explain that tracking sheets “are used in the process of drafting, reviewing, editing, and revising draft letter rulings before their issuance in final form” and are “used by ORD attorneys to communicate their legal advice and opinions.” You also state that all of the communications submitted were made for the purpose of providing legal services and that none “were intended to be disclosed and none have been disclosed to non-privileged parties.” Based on your representations and our review, we conclude that the information you have provided is subject to the attorney-client privilege and may be withheld under section 552.107 of the Government Code. Because our ruling on this issue is dispositive, we do not address the remaining argument against disclosure.

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,



William A. Hill
Assistant Attorney General
Opinion Committee

WAH/sdk

Ref: ID# 610497

Enc. Submitted documents

c: Requestor
(w/o enclosures)