



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 21, 2016

Ms. Vernique R. Hutchinson
Counsel for the El Paso Central Appraisal District
Perdue Brandon Fielder Collins & Mott, L.L.P.
1235 North Loop West, Suite 600
Houston, Texas 77008

OR2016-16429

Dear Ms. Hutchinson:

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# 622407.

The El Paso Central Appraisal District (the "district"), which you represent, received two requests from different requestors for a letter addressed at a specified district board meeting. The district claims the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments submitted by the first requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the first requestor asserts the submitted information should be released pursuant to the Open Meetings Act, chapter 551 of the Government Code, because the matter was discussed by board members at a public meeting. Section 551.022 of the Government Code provides the "minutes and tape recordings of an open meeting are public records and

¹Although the district also raises section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 677 (2002), 676 (2002). The proper exceptions to raise when asserting the attorney client for information not subject to section 552.022 of the Government Code is section 552.107. *See* ORDs 677, 676.

shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee." *Id.* § 551.022. The submitted information does not consist of the minutes or tape recording of an open meeting by the district. Therefore, the district is not required to release the submitted information pursuant to section 551.022. Accordingly, we will address the district's arguments to withhold the submitted information under the Act.

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. ORD 676 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. *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).

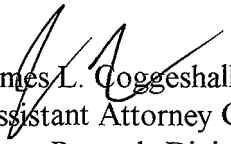
The district explains the submitted information constitutes a confidential communication between an attorney for and officials of the district that was made in furtherance of the rendition of professional legal services to the district. The district also asserts the communication was intended to be confidential and its confidentiality has been maintained. Upon review, we find the district has demonstrated the applicability of the attorney-client

privilege to the information at issue. Therefore, the district may withhold the submitted information under section 552.107(1) of the Government Code.²

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 622407

Enc. Submitted documents

c: Requestors
(w/o enclosures)

²As our ruling is dispositive, we do not address the other argument of the district to withhold this information.