



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 24, 2017

Mr. Robert Viña III
Assistant District Attorney
Hidalgo County
100 East Cano
Edinburg, Texas 78539

OR2017-04152

Dear Mr. Viña:

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# 651302 (ORR# 2017-0002-DA).

The Hidalgo County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to specified applications for protective orders. The district attorney's office claims the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the claimed exceptions 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).

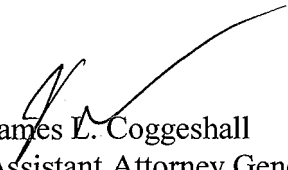
The district attorney’s office informs us the submitted information consists of a communication between attorneys of the district attorney’s office and a protective order applicant that was made to facilitate the rendition of professional legal services to the applicant. The district attorney’s office also explains it represents applicants for protective orders and files the protective orders on behalf of the victim of family violence. *See* Fam. Code § 81.007(a) (county attorney or criminal district attorney is prosecuting attorney responsible for filing protective order applications); *see also* Attorney General Opinion JC-0439 at 7 (2001) (section 81.007 of Family Code makes county or district attorney’s office responsible to file for county residents applications for protective orders in situations involving family violence). The district attorney’s office informs us it forms an attorney-client relationship with a protective order applicant, and the information communicated is held in confidence and is not intended to be disclosed to third parties. *See* Tex. R. Evid. 503(a)(1) (“client” includes person who is rendered professional legal services by lawyer, or who consults lawyer with view to obtaining professional legal services from that lawyer); *see also* Fam. Code §§ 81.002 (applicant for protective order or attorney representing applicant may not be assessed fee, cost, charge, or expense in connection with filing, serving, or entering of protective order), .0075 (prosecuting attorney who represents party in protective order proceeding may represent Department of Family and Protective Services in subsequent action involving party). Based on these representations, we find the submitted information is protected by the attorney-client privilege. Therefore, the district

attorney's office may withhold the submitted information under section 552.107(1) of the Government Code.¹

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/bw

Ref: ID# 651302

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we do not address the other arguments of the district attorney's office to withhold this information.