



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2017

Ms. Lauren Downey
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

OR2017-14463

Dear Ms. Downey:

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 #664348. Preparation of the ruling has been assigned to the Opinion Committee of this office.

You tell us that the Office of the Attorney General (the "OAG") received a request for "any and all communications to, from, or between any employee of the [OAG] and any employee or representative of the Heidi Group and/or the name under which it sometimes operates, the Wellness Coalition, including but not limited to its leader, Carol Everett." (footnote omitted). The request for information also "seeks any communications to, from, or between any employee of [the OAG] and any employee of the State of Texas, including elected officials and executive branch employees, regarding the Heidi Group, the Wellness Coalition, and/or Carol Everett." You state that the OAG has released some of the responsive information to the requestor. You assert that the remaining responsive information is excepted from public disclosure in its entirety under section 552.107 of the Government Code. You also assert in the alternative that a certain portion of the remaining responsive information is additionally excepted from public disclosure under section 552.111 of the Government Code. We have

considered the exceptions you claim and reviewed the representative samples of information you submitted under the tab marked “Exhibit B.”¹

Section 552.107(1) of the Government Code protects information subject to 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 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)–(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 at issue include communications between attorneys and staff in the OAG’s Administrative Law Division and Executive Administration discussing a

¹ We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Tex. Att’y Gen. ORD-499 (1988) at 6, Tex. Att’y Gen. ORD-497 (1988) at 4. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

particular Advisory Committee.” You further state that the “documents at issue also include emails and notes between OAG attorneys and personnel, internal ORD tracking sheets, and draft open records letter rulings.” You assert that the documents “constitute or reveal confidential communications between privileged parties that were made for the purpose of providing professional legal services to the State.” You also state that these communications were not intended to be disclosed and have not been disclosed to non-privileged parties.

Based on your representations and our review, we find that the information submitted in the tab marked “Exhibit B” constitutes attorney-client communications made in furtherance of the rendition of legal services to an OAG client agency. Therefore, we conclude that the OAG may withhold the documents in their entirety 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,



Becky P. Casares
Assistant Attorney General
Opinion Committee

BPC/sdk

Ref: ID# 666620

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining argument against disclosure.