



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 15, 2017

Ms. Kathryn Kraft
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202-3317

OR2017-26123

Dear Ms. Kraft:

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# 684252.

Dallas County (the "county") received a request for the requestor's personnel file, including a specified grievance. You state the county has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.102 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The county must withhold the information you have marked under section 552.102(a) of the Government Code.

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 consists of communications between a county attorney and county employees in their capacity as clients. You also state the communications were made in confidence for the purpose of facilitating the rendition of professional legal services to the county and these communications have remained confidential. Upon review, we find you have demonstrated the applicability of the attorney-client privilege to the communications at issue. Therefore, the county may generally withhold Exhibit B under section 552.107(1) of the Government Code. However, we note some of the otherwise privileged e-mail strings include e-mails sent to or received from the requestor, a non-privileged party. Furthermore, if these e-mails are removed from the e-mail strings and stand alone, they are responsive to the instant request. Therefore, if the county maintains these non-privileged e-mails, which we have marked, separate and apart from the otherwise privileged e-mail strings in which they appear, then the county may not withhold the non-privileged e-mails under section 552.107(1) of the Government Code.

In summary, the county must withhold the information you have marked under section 552.102(a) of the Government Code. The county may generally withhold Exhibit B under section 552.107(1) of the Government Code. However, if the county maintains the marked non-privileged e-mails separate and apart from the otherwise privileged e-mail strings in which they appear, then the county may not withhold the non-privileged e-mails under section 552.107(1) of the Government Code, and the county must release the non-privileged information in Exhibit B. Regardless, the county must release the remaining information in Exhibit C.

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 684252

Enc. Submitted documents

c: Requestor
(w/o enclosures)