



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 12, 2017

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

OR2017-28164

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# 687623. Preparation of the ruling has been assigned to the Opinion Committee of this office.

You submitted the request for documents under a tab marked as Exhibit A. You state that the Office of the Attorney General ("OAG") has released some of the requested information, but that the remainder of the responsive information is excepted from disclosure under Government Code sections 552.107 and 552.111. We have considered the exception you claim and reviewed the information you have submitted under Exhibit B.

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 documents submitted under Exhibit B consists of or reveal communications between ORD attorneys and staff. The documents include e-mails and notes between ORD attorneys and staff, internal ORD tracking sheets, and a draft enforcement letter. You inform us that tracking sheets are circulated with the drafts and explain that ORD attorneys use the tracking sheets to communicate their legal advice and opinions in the process of drafting, reviewing, editing, and revising draft letters and rulings before their issuance in final form. You further state that none of the communications provided under Exhibit B 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 documents you have provided under Exhibit B consists of or reveal privileged attorney-client communications and may be withheld under section 552.107 of the Government Code. Because this ruling is dispositive, we do not address your remaining arguments against disclosure of this information.

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,

A handwritten signature in black ink, appearing to read "William A. Hill". The signature is written in a cursive style with some loops and flourishes.

William A. Hill
Assistant Attorney General
Opinion Committee

WAH/eb

Ref: ID# 687623

Enc. Submitted documents

c: Requestor
(w/o enclosures)