



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 20, 2017

Mr. James R. Evans Jr.  
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Austin, Texas 78735

OR2017-28929

Dear Mr. Evans:

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# 688278.

The Blanco County Appraisal District (the "district"), which you represent, received a request for e-mails and attachments pertaining to a named individual during a specified time period which pertains to a previous request for information. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you note some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-14796 (2017). In Open Records Letter No. 2017-14796, we concluded the district must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy and release the remaining information. However, because the

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<sup>1</sup>We note, although the district raises section 552.022 of the Government Code as an exception to disclosure, section 552.022 acts to make certain information public, and is not an exception to disclosure. Additionally, although you also raise Texas Rule of Evidence 503, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code. *See* Open Records Decision Nos. 677 (2002), 676 at 1-2 (2002).

relevant facts have changed since the issuance of Open Records Letter No. 2017-14796, we conclude the district may not rely on that ruling as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address your arguments for 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. *See* ORD 676 at 6-7. First, a governmental body must demonstrate 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 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. *See 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 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 claim the submitted information is protected by section 552.107(1) of the Government Code. You represent the information at issue consists of communications between a district

official and an attorney for the district. You state the communications were made for the purpose of facilitating the rendition of professional legal services to the district. You further state these communications were intended to be, and have remained, confidential. Based on your representations and our review, we find the district has demonstrated the applicability of the attorney-client privilege to some of the information at issue. Accordingly, the district may withhold the information we have marked under section 552.107(1) of the Government Code.<sup>2</sup> We note, however, the otherwise privileged e-mail strings includes attachments that were released pursuant to Open Records Letter No. 2017-14796, and thus have been shared with a non-privileged party. Furthermore, if these attachments are removed from the otherwise privileged e-mail string in which they appear and stand alone, they are responsive to the request for information. Therefore, the district may not withhold these non-privileged attachments, which we have marked, under section 552.107(1) of the Government Code. *See* Gov't Code § 552.007 (information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information the district marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the district may withhold the information we have marked under section 552.107(1) of the Government Code. The district must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must release the remaining information.

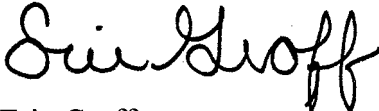
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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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](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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/sb

Ref: ID# 688278

Enc. Submitted documents

c: Requestor  
(w/o enclosures)