



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 12, 2018

Mr. Ronny H. Wall
Associate General Counsel
Texas Tech University System
P.O. Box 45031
Lubbock, Texas 79409-5031

OR2018-03213

Dear Mr. Wall:

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# 695516.

Texas Tech University (the "university") received a request for any documents or e-mails pertaining to a named individual sent to or from specified parties and any documents pertaining to a specified investigation.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.²

¹The university sent the requestor an estimate of charges, which required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See* Gov't Code § 552.263(a). You inform us the university received the required deposit on November 10, 2017. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). 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.

Initially, you state Attachments C and D were the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2016-17315 (2016). In that ruling, we determined (1) the university must withhold certain information under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code; (2) the university may withhold certain information under section 552.103 of the Government Code; (3) the university must withhold certain information under section 552.117(a)(1) of the Government Code; and (4) the university must release the remaining information. You state the law, facts, or circumstances on which the prior ruling was based have not changed. Thus, the university must continue to rely on Open Records Letter No. 2016-17315 as a previous determination and withhold or release the information at issue in accordance with that ruling.³ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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).

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* Open Records Decision No. 676 at 6-7 (2002). 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

³As our ruling is dispositive, we need not address your arguments against disclosure of this information.

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).

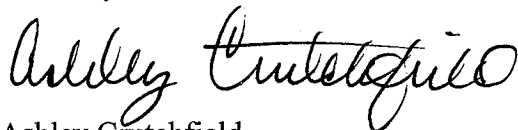
You state Attachment E consists of communications between university attorneys and employees that were made for the purpose of providing legal services to the university. You state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find Attachment E consists of privileged attorney-client communications. Therefore, the university may withhold Attachment E under section 552.107(1) of the Government Code.

In summary, the university must continue to rely on Open Records Letter No. 2016-17315 as a previous determination and withhold or release Attachments C and D in accordance with that ruling. The university may withhold Attachment E under section 552.107(1) of the Government Code.

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/sb

Ref: ID# 695516

Enc. Submitted documents

c: Requestor
(w/o enclosures)