



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 4, 2019

Ms. Laura Anne Coats
Assistant District Attorney
Dallas County
Frank Crowley Courts Building
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2019-03166

Dear Ms. Coats:

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# 749144.

The Dallas County District Attorney's Office (the "district attorney's office") received two requests from the same requestor for certain information pertaining to a specified incident involving the requestor.¹ You state you do not have information responsive to some categories of the request.² You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹You state the district attorney's office sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 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 inform us the submitted information consists of communications between attorneys of the district attorney’s office and a protective order applicant that were made to facilitate the rendition of professional legal services to the applicant. You explain the district attorney’s office represents applicants for protective orders and files the protective orders on behalf of the victim of family violence. *See* Fam. Code § 81.007(a) (county attorney or criminal district attorney is prosecuting attorney responsible for filing protective order applications); *see also* Attorney General Opinion JC-0439 at 7 (2001) (section 81.007 of Family Code makes county or district attorney’s office responsible to file for county residents applications for protective orders in situations involving family violence). You also inform us the district attorney’s office forms an attorney-client relationship with a protective order applicant, and the information at issue is held in confidence and is not intended to be disclosed to third parties. *See* Tex. R. Evid. 503(a)(1) (“client” includes person who is rendered professional

legal services by lawyer, or who consults lawyer with view to obtaining professional legal services from that lawyer); *see also* Fam. Code §§ 81.002 (applicant for protective order or attorney representing applicant may not be assessed fee, cost, charge, or expense in connection with filing, serving, or entering of protective order), .0075 (prosecuting attorney who represents party in protective order proceeding may represent Department of Family and Protective Services in subsequent action involving party). Based on these representations, we find the submitted information is protected by the attorney-client privilege. Therefore, the district attorney's office may withhold the submitted information under section 552.107(1) of the Government Code.³

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/eb

Ref: ID# 749144

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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