



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

May 22, 2019

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

OR2019-13612

Dear Ms. Harden:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was originally received by the Open Records Division (“ORD”) of this office and assigned ID #765220-19. Because ORD possessed documents responsive to the request, preparation of this ruling has been assigned to the Opinion Committee.

The Office of the Attorney General (the “OAG”) received a Public Information Act request from Mr. Matthew Kish on March 7, 2019. You claim the information submitted in Exhibit B is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the representative samples submitted as Exhibit B.<sup>1</sup>

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. TEX. GOV’T CODE § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege to withhold the information at issue. Tex. Att’y Gen. ORD-676 (2002) at 6–7. First, a governmental body must demonstrate “the

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<sup>1</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. 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. See TEX. GOV’T CODE §§ 552.301(e)(1)(D), .302; Tex. Att’y Gen. ORD-499 (1988) at 6, ORD-497 (1988) at 4.

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. *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) (attorney-client privilege does not apply if attorney is 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, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* 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).

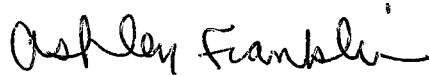
Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding [mand. denied]). Moreover, because the client may elect to waive the privilege 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) (privilege extends to “entire communication, including facts contained therein”).

You state that the information within Exhibit B consists of or reveals communications between and among ORD attorneys and staff made for the purpose of providing professional legal services to the ORD. You also state that none of the communications within the document 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 information you have provided under Exhibit B is subject to attorney-client privilege and may be withheld 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](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 Franklin  
Assistant Attorney General  
Opinion Committee

AF/eb

Ref: ID# 765220

Enc. Submitted documents

c: Requestor  
(w/o enclosures)