



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2019

Ms. Julia Lace Armstrong
Counsel for the Travis Appraisal Review Board
Armstrong & Armstrong, P.C.
3824 Cedar Springs Road, Suite 702
Dallas, Texas 75219

OR2019-20430

Dear Ms. Armstrong:

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# 773244.

The Travis Appraisal Review Board (the "board"), which you represent, received a request for all e-mails sent to or received by a specified e-mail address. You claim the submitted information is excepted from disclosure under sections 552.101 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

¹Although you raise section 552.022 of the Government Code, this section is not an exception to disclosure under the Act. *See* Gov't Code 552.022 (enumerating categories of information not to be excepted from disclosure unless made confidential under Act or other law).

²We assume that 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.

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). 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.*, 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 assert the submitted information includes attorney-client privileged communications. We note you have not identified the information you contend is privileged under the attorney-client privilege or identified the privileged parties. *See* Gov’t Code § 552.301(e)(2) (governmental body must label information to indicated which exceptions apply). Therefore, we conclude the board has not established the information at issue consists of privileged attorney-client communications, and the board may not withhold it under section 552.107(1).

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes. Section 25.025 of the Tax Code states, pertinent part:

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the appraisal district, this state, the comptroller, and taxing units and political subdivisions of this state if:

(1) the information identifies the home address of a named individual to whom this section applies; and

(2) the individual:

(A) chooses to restrict public access to the information on the form prescribed for that purpose by the comptroller under Section 5.07; or

(B) is a federal or state judge as defined by section 572.002, Government Code, or the spouse of a federal or state judge, beginning on the date of the Office of Court Administration of the Texas Judicial System notifies the appraisal district of the judge's qualification for the judge's office.

(c) A choice made under Subsection (b) remains valid until rescinded in writing by the individual.

(d) This section does not prohibit the public disclosure of information in appraisal records that identifies property according to an address if the information does not identify an individual who has made an election under Subsection (b) in connection with the individual's address.

Tax Code § 25.025(b)-(d). Section 25.025(a) sets forth certain categories of individuals who are authorized to make an election of confidentiality pursuant to section 25.025(b). *See id.* § 25.025(a). Section 25.02 of the Tax Code prescribes the information that must be contained within appraisal records. *See id.* § 25.02. This information includes the names and addresses of the owner of the property. *See id.* You state the individuals identified in the submitted information could “fall within the parameters of one of the occupational and professional exceptions enumerated in . . . [s]ection 25.025[.]” However, upon review, we find you have failed to demonstrate the submitted e-mails consist of information in appraisal records for the purposes of section 25.02. Thus, we conclude the board may not withhold the submitted information under section 552.101 in conjunction with section 25.025.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain enumerated individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the

information confidential.³ Gov't Code § 552.1175. Upon review, we find some of the submitted information may consist of personal information of individuals who may be among the type of individuals listed in section 552.1175(a). Thus, to the extent the home addresses and telephone numbers in the submitted information pertain to individuals to whom section 552.1175(a) applies and the individuals elect to restrict access to their information in accordance with section 552.1175(b), the board must withhold such information under section 552.1175. If the home addresses and telephone numbers do not pertain to individuals to whom section 552.1175(a) applies or no election is made, the board may not withhold this information under section 552.1175.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). We are unable to determine whether the personal e-mail addresses within the remaining information at issue, which are located within e-mails communicating official business of the board, belong to board officials or employees. Thus, we rule conditionally. To the extent the e-mail addresses within the remaining information are the personal e-mail addresses of board officials or employees, or to the extent subsection (c) applies, this information is not subject to section 552.137 and may not be withheld on that basis. *See Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of “members of the public” for purposes of Gov't Code § 552.137(a)). However, to the extent the e-mail addresses within the remaining information are not the personal e-mail addresses of board officials or employees and subsection (c) does not apply, this information is subject to section 552.137 and must be withheld under section 552.137, unless the owners of the e-mail addresses affirmatively consent to their release.

In summary, to the extent the home addresses and telephone numbers in the submitted information pertain to individuals to whom section 552.1175(a) applies and the individuals elect to restrict access to their information in accordance with section 552.1175(b), the board must withhold such information under section 552.1175 of the Government Code. To the extent the e-mail addresses within the remaining information are not the personal e-mail addresses of board officials or employees and subsection (c) does not apply, the board must

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

withhold this information under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release. The board must release the remaining 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 that reads "Emily Kunst". The signature is written in a cursive, flowing style.

Emily Kunst
Assistant Attorney General
Open Records Division

EK/mo

Ref: ID# 773244

Enc. Submitted documents

c: Requestor
(w/o enclosures)