



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 23, 2020

Ms. Marie N. Johnson  
Counsel for the Town of Argyle  
Messer, Fort & McDonald  
6371 Preston Road, Suite 200  
Frisco, Texas 75034

OR2020-02111

Dear Ms. Johnson:

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# 807451 (ORR# A101019SW and A102519DR).

The Town of Argyle (the "town"), which you represent, received two requests from two requestors for information related to their participation in a specified investigation, including a specified audio recording.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted the audio recording requested by the first requestor. To the extent any information responsive to this portion of the first requestor's request existed on the date the town received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code

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<sup>1</sup> You state the town sought and received clarification of the information requested from the first requestor. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup> 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; therefore, we address your claim of the attorney-client privilege under section 552.107. *See* Open Records Decision No. 676 at 6 (2002).

§§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, you indicate some of the submitted information, which you marked, is not responsive to the instant requests because it does not relate to the requestors' participation in the specified investigation. Upon review, we find portions of the information at issue are not responsive to the instant requests. This ruling does not address the public availability of any information that is not responsive to the requests and the town is not required to release such information in response to these requests. However, the remaining information at issue, which we marked, relates to the requestors and is thus responsive to the instant requests. Accordingly, we will address your argument for this information, as well as the remaining responsive information.

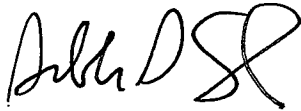
Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. ORD 676 at 6-7. First, a governmental body must demonstrate that 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 a 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. *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 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) (privilege extends to entire communication, including facts contained therein).

You state the responsive information consists of confidential communications between the town attorney's office and a privileged third party. You also state the communications were made in furtherance of the rendition of professional legal services to the town. You state the communications were intended to be confidential and have remained confidential. Upon review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Thus, the town may withhold the responsive information 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/mo

Ref: ID# 807451

Enc. Submitted documents

c: Requestor  
(w/o enclosures)