



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 10, 2020

Ms. Kimberly Ashby
Public Information Office
Blanco County
P.O. Box 471
Johnson City, Texas 78636

OR2020-03900

Dear Ms. Ashby:

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# 810761.

The County of Blanco (the "county") received a request for information pertaining to specified communications involving named individuals during a specified time period. You state you released some of the submitted information to the requestor. You claim the remaining submitted information is excepted from disclosure under section 552.107 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion the county did not comply with the procedural obligations of section 552.301 of the Government Code. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(d) of the Government Code, a governmental body must provide the requestor with (1) a written statement that the governmental body wishes

¹ Although the county raises 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. *See* Open Records Decision No. 676 at 1-2 (2002). Further, although the county also raises section 552.101 of the Government Code, the county has not provided any arguments to support this exception. Therefore, we assume the county has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). The requestor asserts he was not timely notified of the request for ruling at issue as required by section 552.301(d) of the Government Code because he received the correspondence at issue after the ten-business-day deadline. The copy of the request for information shows it was sent by e-mail and received after business hours on November 13, 2019. Thus, the request is considered received on November 14, 2019. We understand the county was closed on November 28, 2019. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Thus, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was November 29, 2019. The envelope in which the county submitted to this office the information required by section 552.301(b) is postmarked November 25, 2019. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). The request for a ruling indicates the requestor was copied on that correspondence. Consequently, we find the requestor has failed to establish the county did not comply with the procedural requirements mandated by section 552.301(d) of the Government Code.

Next, we address the requestor's assertion the county may possess additional information responsive to the request. We note the Act does not require a governmental body to answer general questions, perform legal research, or create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision No. 561 at 8-9 (1990). In this instance, the county states the information submitted for our review consists of the information requested. Therefore, we assume county has made a good-faith effort to locate any information responsive to the request at issue, and we will address the county's argument to withhold the information at issue.

Section 552.107(1) of the Government Code protects information coming with 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* ORD 676 at 6-7. 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 state the information at issue consists of communications between attorneys for the county and county employees that were made for the purpose of providing legal services to the county. You state the communications were intended to be confidential and have remained confidential. Based upon your representations and our review, we find you have established the applicability of the attorney-client privilege to the information at issue. Accordingly, the county may generally withhold Exhibits C through F4 under section 552.107(1) of the Government Code. We note, however, some of these otherwise privileged e-mail strings include e-mails received from a non-privileged party. Furthermore, if the e-mails received from the non-privileged party are removed from the otherwise privileged e-mail strings in which they appear and stand alone, they are responsive to the request for information. Therefore, if these non-privileged e-mails are maintained by the county separate and apart from the otherwise privileged e-mail strings in which they appear, then the county may not withhold these non-privileged e-mails under section 552.107(1). In that case, the county must release these non-privileged e-mails, which we marked. The county must release the remaining information.²

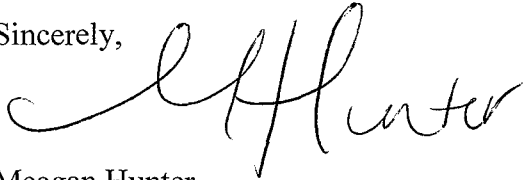
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

² We note the information being released contains an e-mail address to which the requestor has a right of access under section 552.137(b) of the Government Code. *See Gov't Code* § 552.137(b). However, Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold specific categories of information without the necessity of requesting an attorney general decision, including e-mail addresses of members of the public under section 552.137 of the Government Code. Thus, if the county receives another request for this same information from a person who does not have a right of access to it, Open Records Decision No. 684 authorizes the county to redact the requestor's e-mail address without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink, appearing to read "Meagan Hunter". The signature is fluid and cursive, with the first name "Meagan" written in a larger, more prominent script than the last name "Hunter".

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/mo

Ref: ID# 810761

Enc. Submitted documents

c: Requestor
(w/o enclosures)