



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 17, 2020

Ms. Clara H. Saafir  
Assistant District Attorney  
Dallas County District Attorney's Office  
411 Elm Street, 5th Floor  
Dallas, Texas 75202-3317

OR2020-11177

Dear Ms. Saafir:

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# 822908.

Dallas County (the "county") received a request for information pertaining to three specified complaints filed by the requestor. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup> 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).

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

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<sup>1</sup> Although you also raise section 552.111 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302.

<sup>2</sup> We assume 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.

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 submitted information consists of communications between attorneys for the county and attorney representatives that were made for the purpose of providing legal services to the county. You further state the communications were intended 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 we marked. Accordingly, the county may generally withhold the information we marked under section 552.107(1) of the Government Code. We note, however, the remaining information has been shared with individuals you have not demonstrated are privileged parties. Therefore, we conclude you have failed to establish the remaining information at issue constitutes privileged attorney-client communications for the purpose of section 552.107(1). Thus, the county may not withhold the remaining information on that basis.

Additionally, we note some of the otherwise privileged e-mail strings include e-mails received from or sent to a non-privileged party. Furthermore, if the e-mails received from or sent to 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 the county maintains these non-privileged e-mails, which we marked, separate and apart from the otherwise privileged e-mail strings in which they appear, then these non-privileged e-mails are not excepted under section 552.107(1), and the county may not

withhold them on that basis. In that case, the county must release these non-privileged e-mails, which we marked.<sup>3</sup>

In summary, the county may generally withhold the information we marked under section 552.107(1) of the Government Code. However, if the county maintains the non-privileged e-mails, which we marked, separate and apart from the otherwise privileged e-mail strings in which they appear, then the non-privileged e-mails are not excepted under section 552.107(1), and the county must release them. The county 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 <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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/be

Ref: ID# 822908

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> In this instance, the requestor has a right of access to his own personal e-mail address in the information being released. See Gov't Code § 552.137(b) (personal e-mail address of member of the public may be disclosed if owner of address affirmatively consents to its disclosure). 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.