



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 17, 2020

Mr. Carlos E. Alferez  
Counsel for Manor Independent School District  
Walsh, Gallegos, Trevino, Russo & Kyle, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2020-23527

Dear Mr. Alferez:

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# 844061.

The Manor Independent School District (the "district"), which you represent, received a request for information pertaining to RFP #191(AL)20-00.<sup>1</sup> You state the district released some of the requested information. You claim the some of the submitted information is excepted from disclosure under section 552.107 of the Government Code.<sup>2</sup> You also state, although the district takes no position with respect to whether the remaining submitted information is excepted from disclosure, its release may implicate the interests of third

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<sup>1</sup> You state the district sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date 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. *See* Open Records Decision No. 676 at 1-2 (2002). Additionally, you acknowledge the district failed to comply with the procedural requirements of section 552.301(b) of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b). Nonetheless, because third party interests and the attorney-client privilege can provide compelling reasons to overcome the presumption of openness, we will consider the interests of third parties and the applicability of section 552.107(1) to the submitted information. *See id.* § 552.302; *see also Paxton v. City of Dallas*, 509 S.W.3d 247 (Tex. 2017); Open Records Decision No. 150 at 2 (1977).

parties. Accordingly, you state the district notified AT&T Corporation, Netsync Network Solutions, Spectrum Enterprise, and WANRack Private Fiber Networks of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from the third parties explaining why their information should not be released to the requestor. Thus, we have no basis to conclude the release of the submitted information would implicate the third parties' interests, and none of the submitted information may be withheld on that basis. *See, e.g., id.* § 552.110 (requiring provision of specific factual evidence demonstrating applicability of exception).

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 information in Exhibit 5 constitutes communications between attorneys for the district and district employees and representatives in their capacity as clients that were made for the purpose of providing legal services to the district. You state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find Exhibit 5 consists of privileged attorney-client communications the district may withhold under section 552.107(1).

We note portions of Exhibit 4 are subject to section 552.136 of the Government Code.<sup>3</sup> Section 552.136 states, “Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). Accordingly, the district must withhold the bank account numbers and bank routing numbers in Exhibit 4 under section 552.136.

We note some of the remaining information in Exhibit 4 appears to be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district may withhold Exhibit 5 under section 552.107(1) of the Government Code. The district must withhold the bank account numbers and bank routing numbers in Exhibit 4 under section 552.136 of the Government Code. The district must release the remaining information in Exhibit 4; however, any information protected by copyright may only be released in accordance with copyright law.

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

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

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,

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/mo

Ref: ID# 844061

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

4 Third Parties  
(w/o enclosures)