



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 7, 2020

Ms. Evette P. Ugues
Assistant County Attorney
El Paso County Attorney's Office
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2020-25169

Dear Ms. Lopez:

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# 847591 (ORR# OP-20-0919).

El Paso County (the "county") received a request for communications regarding a specified matter. The county claims some of the submitted information is either not subject to the Act or excepted from disclosure under sections 552.107 and 552.117 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

The county informs us some of the submitted information is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the county is not required to release this information in response to this request.

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. Open Records Decision No. 676 at 6-7 (2002). 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.* 503(b)(1), 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).

The county asserts the information it has marked under section 552.107(1) consists of confidential communications between attorneys for and clients of the county that were made for the purpose of rendering professional legal advice. It also asserts the communications were intended to be confidential and their confidentiality has been maintained. Upon review, we find the county has demonstrated the applicability of the attorney-client privilege to this information. Therefore, the county may withhold the information it has marked under section 552.107(1) of the Government Code.

Section 552.117(a)(15) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or former state judge, as that term is defined by section 1.005 of the Election Code, as well as information that reveals whether the person has family members. *See* Gov't Code § 552.117(a)(15). Section 552.117 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). The county states the information it has marked under section 552.117(a)(15) consists of a cellular telephone number of a state judge. Accordingly, the county must withhold the information it has marked under section 552.117(a)(15) of the Government Code if the cellular telephone service was not provided to the judge at issue at public expense. However, if the cellular telephone service was provided to the judge at public expense, then the county may not withhold the information at issue on that ground.

In summary, the county may withhold the information it has marked under section 552.107(1) of the Government Code. The county must withhold the information it has

marked under section 552.117(a)(15) of the Government Code if the cellular telephone service was not provided to the judge at issue at public expense. The county must release the remaining responsive 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 847591

Enc. Submitted documents

c: Requestor
(w/o enclosures)