



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 9, 2020

Mr. Travis Mickleto
Assistant County Attorney
Williamson County
405 M.L.K. Street #7
Georgetown, Texas 78626

OR2020-25421

Dear Mr. Mickleto:

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# 848515 (ORR# 2020-555-PIA).

The Williamson County Attorney's Office (the "county attorney's office") received a request for call logs and text messages sent or received by a named individual on a specified date. The county attorney's office claims the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.108, and 552.117 of the Government Code. We have considered the exceptions the county attorney's office claims and reviewed the submitted information.

Initially, the county attorney's office indicates some of the submitted information, which it marked, is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the county attorney's office is not required to release such information in response to this request.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Gov't Code § 552.107(1). 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.*, 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 attorney’s office states portions of the responsive information, which it noted, document communications involving attorneys for the county attorney’s office and county employees and officials in their capacities as clients. The county attorney’s office states these communications were made in furtherance of the rendition of professional legal services to the county attorney’s office. The county attorney’s office states these communications were intended to be, and have remained, confidential. Based on these representations and our review, we find the county attorney’s office has demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the county attorney’s office may withhold the information it noted under section 552.107(1) of the Government Code.¹

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov’t Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The county attorney’s office states the remaining responsive information, which it marked, relates to a closed criminal investigation that did

¹ As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

not result in conviction or deferred adjudication. Based on this representation and our review, we agree the county attorney's office may withhold the remaining responsive information under section 552.108(a)(2) of the Government Code.²

In summary, the county attorney's office may withhold the information it noted under section 552.107(1) of the Government Code. The county attorney's office may withhold the remaining responsive information under section 552.108(a)(2) 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 848515

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.