



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 18, 2022

Ms. Hadassah Schloss
Open Government Director
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2022-05081

Dear Ms. Schloss:

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# 930099 (GLO ID# 22-0238).

The Texas General Land Office (the "GLO") received a request for four categories of information pertaining to certain meetings and investments. You state the GLO has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.111, and 552.143 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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.

¹ Although the GLO does not cite to section 552.101 of the Government Code in its brief, we understand the GLO to raise this exception based on the substance of its argument.

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 Exhibit C consists of a communication involving an attorney for the GLO and GLO officials in their capacities as clients. You state the communication was made in furtherance of the rendition of professional legal services to the GLO. You state the communication was intended to be, and has remained, confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the GLO may withhold Exhibit C under section 552.107(1) of the Government Code.²

Section 552.143 of the Government Code provides, in relevant part,

- (a) All information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0225(b) is confidential and excepted from [required public disclosure].
- (b) Unless the information has been publicly released, pre-investment and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from [required public disclosure], except to the extent it is subject to disclosure under Subsection (c).

Gov’t Code § 552.143(a)-(b). You state the remaining information consists of pre-investment due diligence information prepared for and maintained by the GLO. We

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

have no indication the GLO has publicly released any of the information at issue. Further, you inform us the information at issue does not consist of the type of information that is subject to section 552.0225(b) of the Government Code. Based on these representations and our review, we find you have demonstrated the applicability of section 552.143(b) to the information at issue. Accordingly, the GLO must withhold the remaining information under section 552.143 of the Government Code.³

In summary, the GLO may withhold Exhibit C under section 552.107(1) of the Government Code. The GLO must withhold the remaining information under section 552.143 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/mo

Ref: ID# 930099

c: Requestor

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.