



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 10, 2022

Ms. Kimberly Ashby
Public Information Coordinator
Blanco County
Post Office Box 471
Johnson City, Texas 78636

OR2022-07228

Dear Ms. Ashby:

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# 935681.

Blanco County (the "county") received a request for information pertaining to specified properties.¹ The county states it will make some information available to the requestor. The county claims the submitted information is excepted from disclosure under section 552.107 of the Government Code.² We have considered the claimed exception and reviewed the submitted information.

Initially, the county states the information it marked is not responsive to the instant request for information because it does not pertain to the specified properties. 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 such information in response to this request.

¹ The county states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² Although the county raises 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).

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. 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).

The county claims the responsive information is protected by section 552.107(1) of the Government Code. The county states the information at issue consists of communications involving attorneys for the county and county employees and officials in their capacities as clients. The county states the communications were made for the purpose of facilitating the rendition of professional legal services to the county and that these communications have remained confidential. Based on these representations and our review, we find the county has demonstrated the applicability of the attorney-client privilege to some of the information at issue. Thus, except for the information we have marked for release, the county may generally withhold the responsive e-mails under section 552.107(1) of the Government Code. However, upon review, we find the information we have marked for release has been shared with an individual who the county has not demonstrated is a privileged party. Therefore, we conclude the county has failed to establish the information at issue constitutes communications between or among employees and attorneys for the county for the purposes of section 552.107(1). Thus, the county may not withhold the information we have marked for release on that basis. Additionally, we note some of these

otherwise privileged e-mail strings include e-mails received from or sent to a non-privileged party. Further, if the e-mails received from or sent to the non-privileged party are removed from the e-mail strings and stand alone, they are responsive to the request for information. Therefore, if these non-privileged e-mails, which we have marked, are maintained by the county separate and apart from the otherwise privileged e-mail strings in which they appear, then the county may not withhold these non-privileged e-mails under section 552.107(1) of the Government Code. The county must release the remaining responsive information.³

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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/jxd

Ref: ID# 935681

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the information being released contains an e-mail address to which the requestor has a right of access under section 552.137(b) of the Government Code. See Gov't Code § 552.137(b). 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.