



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 10, 2022

Ms. Priscilla de Mata  
Counsel for the Socorro Independent School District  
Blanco, Ordonez, Mata & Wechsler, P.C.  
5715 Cromo Drive  
El Paso, Texas 79912

OR2022-13414

Dear Ms. Mata:

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# 947662 (ORR# 2022-193).

The Socorro Independent School District (the "district"), which you represent, received a request for a specified e-mail and certain information pertaining to the specified e-mail. You state the district released some information. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See id.* § 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.* 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).

You state the information at issue consists of a communication between an attorney for the district and a district official that was made for the purpose of providing legal services to the district. You state the communication was intended to be confidential and has remained confidential. Based on your representations and our review, we find the submitted information consists of a privileged attorney-client communication the district may generally withhold under section 552.107(1) of the Government Code. We note, however, this otherwise privileged e-mail string includes an e-mail received from or sent to a non-privileged party. Furthermore, if the e-mail received from or sent to the non-privileged party is removed from the otherwise privileged e-mail string in which it appears and stands alone, it is responsive to the request for information. Therefore, if this non-privileged e-mail, which we marked, is maintained by the district separate and apart from the otherwise privileged e-mail string in which it appears, then the district may not withhold this non-privileged e-mail under section 552.107(1) and must release the e-mail.

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,

Chase D. Young  
Assistant Attorney General  
Open Records Division

CDY/eb

Ref: ID# 947662

Enc. Submitted documents

c: Requestor  
(w/o enclosures)