



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 30, 2022

Mr. Kieran Hillis  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2022-19002

Dear Mr. Hillis:

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# 957020 (OOG ID# 120-22).

The Office of the Governor (the "governor's office") received a request for (1) certain information pertaining to specified meetings held on a stated date, (2) all records reflecting communications sent between the governor's office and named individuals or entities containing specified search terms during a stated time period, and (3) all e-mails and calendar invitations sent by named employees or officials of the governor's office regarding a specified topic during a stated time period.<sup>1</sup> You state the governor's office will release some responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. Additionally, you indicate the governor's office notified the Texas Division of Emergency

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<sup>1</sup> You state, and provide documentation demonstrating, the governor's office sought and received clarifications of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

Management of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code §§ 552.304, .305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the claimed exceptions and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note some of the submitted information, which we marked, is not responsive to the instant request because it does not consist of the requested records pertaining to category one of the request or does not consist of records within the specified time period for categories two and three of request. This ruling does not address the public availability of any information that is not responsive to the request, and the governor's office is not required to release such information in response to this request.<sup>3</sup>

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. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate 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 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

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<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>3</sup> As we are able to make this determination, we need not address your arguments against disclosure of this information.

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. *See 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 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 responsive information consists of communications between attorneys for the governor’s office, officials and staff of the governor’s office, and another privileged party that were made for the purpose of providing professional legal services to the governor’s office. In addition, you state these communications were not intended to be and have not been disclosed to non-privileged parties. Based upon these representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the governor’s office may withhold the submitted responsive information under section 552.107(1) of the Government Code.<sup>4</sup>

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 M. Graham  
Assistant Attorney General  
Open Records Division

JMG/jxd

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<sup>4</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted responsive information.

Ref: ID# 957020

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: Third Party  
(w/o enclosures)