



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 15, 2022

Ms. Sarah S. Flournoy  
Counsel for the Grapeville-Colleyville Independent School District  
Brackett & Ellis, P.C.  
100 Main Street  
Fort Worth, Texas 76102-3090

OR2022-35531

Dear Ms. Paris:

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# 980372 (ORR# P000784).

The Grapeville-Colleyville Independent School District (the "district"), which you represent, received a request for specified information pertaining to the district's board, including attorney fee bills. The district states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the district did not submit any responsive attorney fee bills. Thus, we find the submitted information is not representative of the other types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the type of information the district has submitted for our review. This ruling does not authorize the district to withhold any information that is substantially different from the type of information the district submitted to this office. *See id.* § 552.302. Accordingly, to the extent any responsive fee bills existed in the possession of the district when it received the request, we assume the district has released that information to the requestor in its entirety. *See Open Records Decision No. 664 (2000)* (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If the district has not released any such information, it must do so at this time. *See Gov't Code* §§ 552.301(a), .302.

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.* 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).

The district explains the submitted information documents confidential communications between an attorney for and employees and officials of the district that were made in furtherance of the rendition of professional legal services. The district also asserts the communications were intended to be confidential and their confidentiality has been maintained. Upon review, we find the district has demonstrated the applicability of the attorney-client privilege to the information at issue. Therefore, the district may withhold the submitted information under section 552.107(1) of the Government Code.<sup>1</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.

---

<sup>1</sup> As our ruling is dispositive, we do not address the other argument of the district to withhold this information.

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 L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jxd

Ref: ID# 980372

c: Requestor