



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 27, 2023

Mr. Naved Qazi
Assistant District Attorney
Dallas County
500 Elm Street, Suite 6300
Dallas, Texas 75202

OR2022-36311A

Dear Mr. Qazi:

This office issued Open Records Letter No. 2022-36311 (2022) on November 21, 2022. Since that time, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for Open Records Letter No. 2022-36311. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Your request was assigned ID# 996413 (Ref. No. D006584-081622).

Dallas County (the "county") received a request for information pertaining to a specified election. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the procedural obligations of the county under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(a), (b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information

requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The county states it received the original request for information on August 16, 2022. We understand the county sought clarifications of the request on August 29, 2022, and August 30, 2022, and received clarifications from the requestor on August 30, 2022, and August 31, 2022, respectively. Accordingly, the county's ten-business-day deadline was reset to September 15, 2022, and the county's fifteen-business-day deadline was reset to September 22, 2022. We understand the county sought additional clarification from the requestor on September 22, 2022. However, we note the county did not send this request for clarification until after the ten-business-day deadline set by the county's receipt of the requestor's clarification on August 31, 2022. As such, the statutory deadlines for requesting an opinion from this office and submitting the required documentation for the request were not reset by the county's third request for clarification and must be measured from the date the county received the requestor's second clarification on August 31, 2022. *See generally City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (after requesting clarification within ten business day deadline, city timely submitted request for opinion within ten business days after receiving clarification). Thus, as stated above, the county's ten and fifteen-business-day deadlines were September 15, 2022, and September 22, 2022, respectively. However, the envelope in which the county provided the information required by section 552.301(e) was postmarked November 2, 2022. *See Gov't Code* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we conclude the county failed to comply with the procedural requirements mandated by section 552.301(e) in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The county claims sections 552.107 and 552.111 of the Government Code for the submitted information. Because section 552.107 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this section for the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exception.

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.*, 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 assert the submitted information consists of communications between attorneys for the county and county employees and officials that were made for the purpose of providing legal services to the county. You state the communications were intended to be, and have remained, confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to some of the information at issue. Accordingly, the county may generally withhold the information we have marked under section 552.107(1) of the Government Code. We note, however, some of these e-mail strings include e-mails received from non-privileged parties. Furthermore, if the e-mails received from the non-privileged parties are removed from the otherwise privileged 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. Additionally, we find the remaining information has been shared with individuals you have not demonstrated are privileged parties. Therefore, we conclude you have failed to establish the remaining information constitutes communications between or among county employees and attorneys for the purposes of section 552.107(1). Thus, the county may not withhold the remaining information on that basis. The county must release the remaining information.

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,

Colin Henry
Assistant Attorney General
Open Records Division

CEH/jxd

Ref: ID# 996413

Enc. Submitted documents

c: Requestor
(w/o enclosures)