



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2004

Ms. Moira Parro
Assistant District Attorney
Dallas County
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2004-4755

Dear Ms. Parro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203181.

Dallas County (the "county") received a request for information relating to the county's policies and procedures for charging for copies in response to requests for information. You claim that some of the requested information is excepted from disclosure under section 552.107 of the Government Code.¹ We have considered the exception you claim and have reviewed the information you submitted.² We assume that you have released any other responsive information that was in existence when the county received this request for information. If you have not released any such information, then you must do so at this

¹As you assert that the attorney-client privilege is applicable to the submitted information, we address your claim under section 552.107(1). See Open Records Decision No. 676 at 1-3 (2002). The attorney-client privilege also is found at Texas Rule of Evidence 503. The Texas Rules of Evidence have been held to be other law that makes information confidential for the purposes of section 552.022 of the Government Code. See Gov't Code § 552.022(a); *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). As section 552.022 is not applicable to the submitted information, we do not address rule 503.

²We note that you also initially raised sections 552.022 and 552.116. As you have submitted no arguments under section 552.116, we do not address that exception to disclosure. See Gov't Code §§ 552.301(e)(1)(A), .302. We also note that section 552.022 is not an exception to public disclosure. Rather, this section lists 18 categories of information that must be released to the public, unless the information is expressly made confidential under other law or constitutes a completed report, audit, evaluation, or investigation made of, for, or by a governmental body that is excepted from disclosure under section 552.108 or made confidential under other law. See *id.* § 552.022(a)(1)-(18).

time.³ We note that the Public Information Act (the “Act”), chapter 552 of the Government Code, does not require you to release information that did not exist when the county received this request or to create responsive information.⁴

Section 552.107(1) protects information that comes within the attorney-client privilege. 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 that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. *See* 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. *See In re Texas 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. *See* TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). 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 to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of 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, no writ). 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).

³*See* Gov’t Code §§ 552.006, .221, .301, .302; Open Records Decision No. 664 (2000).

⁴*See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

You inform us that the submitted information consists of communications between county officials or employees and attorneys in the civil section of the Dallas County District Attorney's Office. You indicate that these communications were made in furtherance of the rendition of professional legal services to the county. You assert that these communications are protected by the attorney-client privilege. Based on your representations and our review of the information at issue, we conclude that the county may withhold the submitted information under section 552.107(1).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 203181

Enc: Submitted documents

c: Mr. Joseph R. Larsen
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(w/o enclosures)