



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 5, 2006

Ms. Susan K. Bohn  
Bracewell & Giuliani LLP  
111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4061

OR2006-04610

Dear Ms. Bohn:

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# 248211.

The Spring Independent School District (the "district"), which you represent, received a request for copies of "all training's, workshops, seminars and professional development literature dispersed by Bracewell and Giuliani . . . for the years 2000 [through] 2006." You claim a portion of the submitted information is not subject to the Act. You claim that the requested information is excepted from disclosure under section 552.107 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you claim that the information in Exhibits F and G is not public information as defined by section 552.002 of the Government Code, and thus is not subject to the Act. The Act applies only to "public information." See Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as:

---

<sup>1</sup>We assume that 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 (1983), 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.

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002. Information is generally subject to chapter 552 when it is held by a governmental body and it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. Open Records Decision No. 635 (1995). You explain that two district employees attended different conferences as part of their personal professional development. You state that the employees were not on official district business and that the district did not require them to attend these conferences. You explain that this information was not collected, assembled, or maintained in connection with the transaction of the district's official business. Furthermore, you indicate that the materials obtained at these conferences are the participants personal property and that if they were to leave their positions with the district they would be entitled to take these materials with them. Based on your representations, we find that the information in Exhibits F and G was not collected, assembled, or maintained by or for the district under a law or ordinance or in connection with the transaction of official business. *See* Gov't Code § 552.002. Therefore, the information in Exhibits F and G is not subject to the Act and need not be released.

Section 552.107(1) of the Government Code protects information coming 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. 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. 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 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 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)(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. *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). The district asserts that the documents in Exhibits A, B, C, D, and E are confidential communications between attorneys for and employees of the district made for the purpose of rendering professional legal advice. You state that the confidentiality of these communications has been maintained. Based on these representation and our review of the information, we agree that the information in Exhibits A through E consists of privileged attorney-client communications that the district may withhold under section 552.107.

In summary, the information in Exhibits F and G is not subject to the Act and need not be released. The information in Exhibits A through E are privileged attorney-client communications and may be withheld under section 552.107 of the Government Code. The remaining submitted information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Matthew T. McLain  
Assistant Attorney General  
Open Records Division

MM/krl

Ref: ID# 248211

Enc. Submitted documents

c: Mr. Raymond Groves, Jr.  
Parent Leadership Union of Texas, Inc.  
312 Webster, Suite 3304  
Houston, Texas 77002  
(w/o enclosures)