



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 5, 2009

Ms. Cara Leahy White  
Assistant General Council  
Taylor, Olson, Adkins, Sralla, Elam L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2009-00011

Dear Ms. White:

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# 331149.

Mental Health Mental Retardation of Tarrant County ("MHMRTC"), which you represent, received a request for policies regarding abuse of inmates, financial information regarding payment for the housing of inmates, communications regarding inmates and incidents of alleged abuse sent to or from a named individual, and e-mails referencing the Star-Telegram. You state that MHMRTC will release a portion of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.107 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor agreed to allow MHMRTC to redact inmates' identifying information from portions of the requested information. As this information is no longer encompassed by the request, it is not responsive and we do not address its availability in this ruling. We have marked additional nonresponsive information.

Next, 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 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). 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 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).

You claim a portion of the submitted information consists of communications made for the purpose of facilitating the rendition of professional legal services. You state the communications were between MHMRTC employees and MHMRTC attorneys, and the communications were to be kept confidential among the intended parties. You also state the confidentiality of the communications has been maintained. However, you have not identified several of the parties to the communications. *See Open Records Decision No. 542* (1990) (stating that governmental body has burden to establishing that exception applies to requested information). From our review of the information at issue, we have been able to identify these unidentified individuals as MHMRTC employees.<sup>1</sup> Accordingly, we find MHMRTC may withhold the information it has clipped under section 552.107 of the Government Code.

Finally, you claim the e-mail addresses you have marked are excepted from public disclosure under section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of

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<sup>1</sup>In the future, MHMRTC should take care to identify all of the individuals who sent or received privileged communications. Failure to do so could result in a waiver of the attorney-client privilege.

communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). However, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We note that some of the e-mail addresses you have marked are government employees’ work e-mail addresses. Additionally, we note that some of the e-mail addresses appear to have been provided by a person who has a contractual relationship with MHMRTC. *See* Gov’t Code § 552.137(c)(1). Accordingly, section 552.137 is not applicable to these e-mail addresses. We have marked the e-mail addresses that are subject to section 552.137. The e-mail addresses we have marked are not the type specifically excluded by section 552.137(c), and you do not inform us that a member of the public has affirmatively consented to their release. Therefore MHMRTC must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code.

In summary, (1) MHMRTC may withhold the information it has clipped under section 552.107 of the Government Code; and (2) MHMRTC must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code. The remaining responsive 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 331149

Enc. Submitted documents

c: Requestor  
(w/o enclosures)