



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2009

Mr. Burt C. Harrison, III
Kazen, Meurer & Pérez, L.L.P.
P.O. Box 6237
Laredo, Texas 78042-6237

OR2009-03609

Dear Mr. Harrison:

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# 337951.

The Laredo Independent School District (the "district"), which you represent, received a request for the requestor's employee file including all applications, evaluations, complaints, reprimands, awards, recognitions, and termination letters. You state that you have released a portion of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code for a portion of the submitted information. Section 261.201(a) provides as follows:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state that the information you have marked was developed and used in a child abuse investigation under chapter 261. *See id.* §§ 261.001(1) (defining “abuse” for the purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* §§ 261.301, 261.406. However, the documents at issue contain information from investigations that were conducted under chapter 261 and that were provided to the district by the Texas Department of Family and Protective Services and the district’s police department. *See id.* § 261.406(b). You do not indicate that the district has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. We find that the information you have marked is confidential pursuant to section 261.201 of the Family Code; the district must therefore withhold it under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*¹

Next, we address your argument against disclosure of the remaining information consisting of the submitted emails. You assert that the submitted emails are excepted under section 552.107(1) of the Government Code, which 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. *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. *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).

¹As we are able to resolve this under section 261.201, we do not address your other arguments for exception of this information.

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)-(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). This means the communication 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 state that the submitted emails document communications between the district’s personnel and the district’s outside attorney made in furtherance of the rendition of legal services and advice to the district. You further state all of these communications were made in confidence, intended for the sole use of the district and its attorney, and they have not been shared or distributed to others. Based on your representations and our review, we agree that the submitted emails constitute privileged attorney-client communications that the district may withhold under section 552.107 of the Government Code.

In summary, (1) the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; and (2) the district may withhold the submitted emails under section 552.107 of the Government Code.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/dls

Ref: ID# 337951

Enc. Submitted documents

c: Requestor
(w/o enclosures)