



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 26, 2009

Mr. Daniel Bradford  
Assistant County Attorney  
Travis County  
P. O. Box 1748  
Austin, Texas 78767

OR2009-03889

Dear Mr. Bradford:

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# 339919.

The Travis County Healthcare District (the "district") received a request for all Travis County Attorney opinions from 2003 to the present regarding the district's responsibility for serving undocumented residents.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.107 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information.

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

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<sup>1</sup>You state the Travis County Attorney's Office does not provide official, formal opinions to the district. You state, however, that in an effort to relate the request to information you possess, you understand the request to seek legal advice that the Travis County Attorney's Office has provided to the district as your attorney.

<sup>2</sup>While you also raise section 552.101 of the Government Code and Texas Rule of Evidence 503 for your argument under the attorney-client privilege, we note that as the information at issue is not subject to section 552.022 of the Government Code, rule 503 does not apply. *See* Open Records Decision No. 676 at 4 (2002). Further, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

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.*, 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).

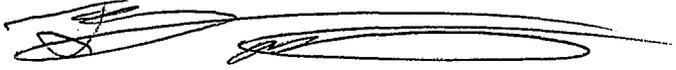
You state that the submitted information consists of confidential communications made for the purpose of facilitating the rendition of professional legal services between the Travis County Attorney’s Office and district employees. Based on these representations and our review of the information at issue, we agree that this information consists of privileged attorney-client communications. Thus, you may withhold the submitted information under section 552.107(1) 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](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,

A handwritten signature in black ink, appearing to read "Travis Tidmore", is written over a horizontal line.

Travis Tidmore  
Assistant Attorney General  
Open Records Division

TT/eb

Ref: ID# 339919

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)