



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2009

Ms. Neera Chatterjee
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2009-07902

Dear Ms. Chatterjee:

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# 345458.

The University of Texas Health Science Center at Houston (the "university") received a request for all records in the possession of a named individual pertaining to the requestor and occurring over a specified period of time. You state some of the requested information will be released. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that this office has issued several prior rulings that would encompass portions of the responsive information. In Open Records Letters Nos. 2009-06185 (2009), 2009-07501 (2009) and 2009-07360 (2009), we concluded that the university may withhold the information submitted in those instances under section 552.107(1) of the Government Code. Therefore, to the extent the submitted information is encompassed by our previous rulings and assuming that the law, facts, and circumstances on which those decisions were based have not changed, the university may continue to rely on our decisions in Open Records Letters Nos. 2009-06185, 2009-07501, and 2009-07360 and withhold the information encompassed by those rulings under section 552.107(1) of the Government

Code. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). To the extent the submitted information is not encompassed by our previous rulings, or to the extent that the information was previously ruled upon but there has been a change in the law, facts, or circumstances on which the previous rulings were based, we will consider your exception to disclosure.

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 Inc. 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)-(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. Finally, the attorney-client privilege applies only to a confidential communication, 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 that the submitted information is protected by the attorney-client privilege. You explain that this information consists of confidential communications between attorneys for and representatives of the university. You state that these communications were made in furtherance of the rendition of professional legal services to the university. You have

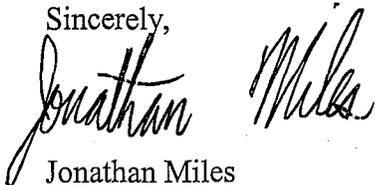
identified the parties to the communications. You state that these communications were not intended to be and have not been disclosed to parties not encompassed by the attorney-client privilege. Based on your representations and our review, we conclude that the university may withhold the submitted information under section 552.107(1) of the Government Code.

In summary, to the extent the submitted information is encompassed by our previous rulings and assuming that the law, facts, and circumstances on which those decisions were based have not changed, the university may rely on our decisions in Open Records Letters Nos. Nos. 2009-06185, 2009-07501, and 2009-07360 and withhold the information addressed in those rulings under section 552.107 of the Government Code. The university may withhold the remaining 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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 354458

Enc. Submitted documents

c: Requestor
(w/o enclosures)