



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2009

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

OR2009-16410

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# 361824.

The University of Texas System (the "system") received a request for law enforcement, personnel, and other information relating to the requestor. You state that some of the requested information either has been or will be released. You claim that other responsive information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.¹ We also have considered the comments that we received from the requestor.² *See Gov't Code*

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the system to withhold any information that is substantially different from the submitted information. *See Gov't Code* §§ 552.301(e)(1)(D), .302; *Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).*

²The requestor asks this office, among other things, to open a criminal investigation. Conducting such an investigation is beyond the scope of this office's authority in issuing open records rulings. *See Gov't Code* § 552.301(a) (open records division's authority is limited to determining, upon a governmental body's request, whether requested information falls within an exception to disclosure). Thus, this ruling does not address the issues raised by the requestor that are beyond the scope of our authority. However, this office has forwarded copies of the requestor's correspondence to the Criminal Investigations Division.

§ 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

The requestor contends, among other things, that the system did not timely comply with section 552.301 of the Government Code in requesting this decision. You inform us that the requestor initially e-mailed his request to the chancellor of the system on August 26, 2009. If that was the date of the receipt of the request, then the system did not comply with section 552.301 and has waived section 552.107 of the Government Code. *See* Gov't Code §§ 552.301(b), (e) (prescribing deadlines with which governmental body must comply in requesting attorney general's decision pursuant to Gov't Code § 552.301(a)), .302; Open Records Decision No. 663 at 5 (1999). You explain, however, that the chancellor's office was advised to inform the requestor that his request must be sent to the public information officer or the officer's designee. You also state, and have submitted documentation reflecting, that the system received this request for information by e-mail on August 31. You requested this decision on September 15 and submitted the remaining materials prescribed by section 552.301 on September 22. If August 31 was the date of the receipt of this request, then the system's correspondence with this office was timely for purposes of section 552.301. We note that, under section 552.301(c), "a written request [for information] includes a request made in writing that is sent *to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission.*"³ Gov't Code § 552.301(c) (emphasis added). Therefore, having considered the system's representations and documentation, as well as the requestor's comments, we conclude that the system received this request for information on August 31. Thus, the system complied with section 552.301 in requesting this decision, and we will consider your claim under section 552.107.

Section 552.107(1) of the Government Code protects information that comes 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. *See* 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. *See 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 capacity other than that of

³We note that the system's public information policies provide for the submission of a request by electronic mail to publicinfo@utsystem.edu. *See* <http://www.utsystem.edu/OGC/openrecords/openrecordstoc.htm> and http://www.utsystem.edu/ogc/openrecords/where_to_send_your_request.htm.

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. See 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), 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. See *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). 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, with the exception of one e-mail, is excepted from disclosure under section 552.107(1).⁴ You contend that the information at issue consists of privileged communications between attorneys for and representatives of the system that were made in connection with the rendition of legal services to the system. You have identified the parties to the communications. You inform us that the communications were intended to be and remain confidential. Based on your representations and our review, we conclude that the system may generally withhold the information at issue under section 552.107(1) of the Government Code. We note, however, that one of the submitted e-mail strings includes a communication with a non-privileged party. If that communication, which we have marked, exists separate and apart from the e-mail string, then it may not be withheld under section 552.107(1) and must be released.⁵

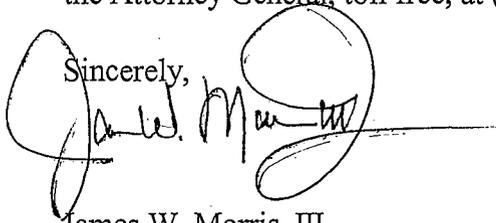
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

⁴You inform us that the remaining e-mail, which was sent by the requestor, has been released. Thus, we do not understand you to claim any exception to the disclosure of that information. See Gov't Code § 552.007.

⁵We note that the marked communication contains the requestor's personal e-mail address, which the system would be required to withhold from the public under section 552.137 of the Government Code unless the requestor has consented to its disclosure. The requestor has a right, however, to his own e-mail address under section 552.137(b).

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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", written over a horizontal line.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 361824

Enc: Submitted documents

c: Requestor
(w/o enclosures)