



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2009

Mr. Robert Schulman
Feldman, Rogers, Morris & Grover, L.L.P.
Attorneys at Law
517 Soledad Street
San Antonio, Texas 78205-1508

OR2009-17995

Dear Mr. Schulman:

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# 364836.

The San Felipe Del Rio Consolidated School District (the "district"), which you represent, received a request for eight categories of information relating to district policies and regulations for establishing residency. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.²

Initially, we note that you have only submitted information responsive to category two of the request which asks for communications concerning proposed changes to the district's policy for establishing residency. To the extent documents responsive to the other requested categories of information exist, we presume the district has released them. If not, the district must do so at this time. *See* Gov't Code §§ 552.301, .302.

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

¹Although you also raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, 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). We further note that section 552.107 of the Government Code is the proper exception to raise for your attorney-client claim in this instance. *See* ORD 676.

²We note you no longer assert the other exceptions you raised in your October 13, 2009 correspondence with our office.

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. 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 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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *See* 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, 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 inform us that the submitted information consists of communications between the district and its attorney. You have identified the parties to the communications. You state that these communications were made for the purpose of facilitating the rendition of professional legal services and that the confidentiality of these communications has been maintained. Based on your representations and our review, we find that the district may generally withhold the submitted information under section 552.107 of the Government Code. We note, however, that one of the individual e-mails contained in the submitted e-mail strings consists of communications with a non-privileged party. To the extent this non-privileged e-mail, which we have marked, exists separate and apart from the submitted e-mail string, it may not be withheld under section 552.107.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of 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). We have marked an e-mail address in the non-privileged e-mail that is

confidential under section 552.137. The district must withhold the e-mail address we have marked unless the district receives consent from the owner of the e-mail address for its release.³

In summary, the district may generally withhold the submitted information under section 552.107 of the Government Code. However, to the extent the non-privileged e-mail we have marked exists separate and apart from the submitted e-mail chains, the district must release it; however, the district must withhold from release the e-mail address we have marked pursuant to section 552.137 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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

³We note the requestor has a right of access to his own e-mail address. *See* Gov't Code § 552.023 ("[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"). We further note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Accordingly, if the district receives another request that encompasses the requestor's e-mail address from an individual other than one with a right of access under section 552.023, the district is authorized to withhold the requestor's e-mail address under section 552.137 without the necessity of requesting an attorney general decision.

Ref: ID# 364836

Enc. Submitted documents

c: Requestor
(w/o enclosures)