



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2011

Mr. David Mendez
Bickerstaff Heath Delgado Acosta, L.L.P.
3711 South MoPac Expressway, Building One, Suite 300
Austin, Texas 78746

OR2011-01985

Dear Mr. Mendez:

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# 408548 (Austin Community College District ORR 889).

The Austin Community College District (the "college"), which you represent, received a request for fourteen categories of information pertaining to a brochure mailed to residents of the San Marcos Consolidated Independent School District (the "district") in regards to the proposed annexation of the district into the Austin Community College tax district. We understand the college has provided most of the requested information, to the extent it existed when the college received the instant request, to the requestor. You claim the submitted e-mails are 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

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* ORD 676 at 6-7. First, a governmental body must demonstrate 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 attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact 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). 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. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Moreover, because the client may elect

¹Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Further, we note as the submitted information is not subject to section 552.022 of the Government Code, rule 503 does not apply in this instance. *See* ORD 676 at 4. We also note section 552.101 does not encompass Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct.

²We note the college received the instant request for information on November 8, 2010, but did not request this decision until December 3, 2010. You explain, and have submitted documentation demonstrating, the college required the requestor to make a deposit for payment of anticipated costs under section 552.263 of the Government Code and received the cost deposit on November 17, 2010. Based on your representations and the submitted documents, we conclude the date of the college’s receipt of this request was November 17, 2010, and the college complied with section 552.301 of the Government Code in requesting this decision. *See* Gov’t Code § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to Gov’t Code § 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond); *see also id.* § 552.301(a)-(b), (e).

to waive the privilege at any time, a governmental body must explain 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 the submitted e-mails are communications between college employees and attorneys representing the college that were made in furtherance of the rendition of professional legal services. You also state the communications were made in confidence, and that confidentiality has been maintained. Based on your representations and our review of the information at issue, we find you have demonstrated the applicability of the attorney-client privilege to the submitted information. Thus, the college may withhold the submitted e-mails 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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 408548

Enc. Submitted documents

c: Requestor
(w/o enclosures)