



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2011

Ms. Neera Chatterjee
Office of the General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2011-13540

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# 430836.

The University of Texas System (the "system") received a request for the schedule of a named regent during a specified time. You state most of the information has been released to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.107 and 552.1175 of the Government Code. We have considered the claimed exceptions 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 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. 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. 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, orig. proceeding). Moreover, because the client may elect 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 information you have marked reveals communications between individuals you have identified as system attorneys, officials, and employees. You state the communications were made for the purpose of facilitating the rendition of legal services, and were intended to be, and have remained, confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the system may withhold the information you have marked under section 552.107 of the Government Code.

You have marked cellular telephone numbers you state belong to peace officers. We note one of these numbers, which we have marked, belongs to a peace officer who is a system employee and is thus subject to section 552.117 of the Government Code.¹ Section 552.117(a)(2) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of peace officers, regardless of whether the peace officer made an election under section 552.024 or 552.1175 of the Government Code to keep such information confidential. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 552.117(a)). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Section 552.117 encompasses personal cellular telephone numbers, provided a governmental body does not pay for the cellular service. *See Open Records Decision No. 506 at 5-6 (1988)* (statutory predecessor to Gov’t Code § 552.117 not applicable to numbers for cellular mobile telephones installed in county

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

officials' and employees' private vehicles and intended for official business). Therefore, the system must withhold the cellular telephone number we have marked under section 552.117(a)(2), provided a governmental body does not pay for the cellular service. However, the system may not withhold this information under section 552.117(a)(2) if a governmental body pays for the cellular service. We are unable to determine whether the remaining cellular telephone numbers you have marked belong to peace officers who are system employees. Thus, we rule conditionally. Therefore, as to the remaining cellular telephone numbers you have marked, the system must withhold this information under section 552.117(a)(2) only if the officers at issue are system employees and a governmental body does not pay for the cellular services. However, the system may not withhold this information under section 552.117(a)(2) if the officers are not system employees or a governmental body pays for the cellular services.

You raise section 552.1175 of the Government Code for the remaining cellular telephone numbers you have marked. Section 552.1175 protects information that relates to a peace officer as defined by article 2.12 of the Code of Criminal Procedure, and provides in part:

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). Like section 552.117, section 552.1175 applies to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision 506 at 5-6 (1988). Section 552.1175 protects information held by a governmental body in a non-employment capacity. We are unable to determine whether the remaining peace officers at issue are system employees. Thus, we rule conditionally. Therefore, to the extent the remaining cellular telephone numbers you have marked belong to peace officers who are not system employees, the system must withhold such information under section 552.1175 only if a governmental body does not pay for the cellular services, and the officers at issue elect to restrict access to their personal information in accordance with section 552.1175(b). However, the system may not withhold the remaining information you have marked under section 552.1175 if a governmental body pays for the cellular services or the peace officers at issue do not elect to restrict access to their personal information under section 552.1175(b).

In summary, the system may withhold the information you marked under section 552.107(1). The system must withhold the cellular telephone number we marked under section 552.117(a)(2) if a governmental body does not pay for the cellular service at issue. To the extent the remaining cellular telephone numbers you have marked belong to peace officers who are system employees, the system must withhold such information under section 552.117(a)(2) if a governmental body does not pay for the cellular services. To the extent the remaining cellular telephone numbers you have marked belong to peace officers who are not system employees, the system must withhold such information under section 552.1175 if a governmental body does not pay for the cellular services and the peace officers at issue elect to restrict access to their personal information in accordance with section 552.1175(b). The remaining information must be released.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 430836

Enc. Submitted documents

c: Requestor
(w/o enclosures)