



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

June 20, 2012

Ms. Patricia Fleming  
Assistant General Counsel  
TDCJ – Office of the General Counsel  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2012-09451

Dear Ms. Fleming:

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# 456969.

The Texas Department of Criminal Justice (the “department”) received a request for a copy of all documents related to a specified disciplinary hearing related to an alleged violation of PD-22 Rule 18c. Some information has been or will be provided to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.107 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the responsive information was previously the subject of a request for information, in response to which this office issued Open Records Letter No. 2011-05969 (2011). In that ruling, we held the department must withhold the information we marked pursuant to section 552.134 of the Government Code, and release the remaining information at issue. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the department must continue to rely on the prior ruling as a previous determination and withhold the identical information in accordance with Open Records Letter No. 2011-05969. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental

body, and ruling concludes information is or is not excepted from disclosure). We note portions of the submitted information were created after the previous request for information. Therefore, to the extent the information in the current request is not encompassed by the previous ruling, we will address your arguments.

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 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, no pet.). 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 under section 552.107 constitutes a legal opinion rendered by an attorney with the department’s Office of General Counsel to the department’s Human Resources Division regarding the dismissal of a department employee. You further state the communication was intended to be, and has remained confidential. Based on your representations and our review of the information at issue, we find the information you have marked under section 552.107 is protected by the attorney-client privilege. Accordingly, the department may withhold the marked information under section 552.107 of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2011-05969 as a previous determination and withhold or release the information we previously ruled on in accordance with that prior ruling. The department may withhold the information it has marked 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](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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/eb

Ref: ID# 456969

Enc. Submitted documents

c: Requestor  
(w/o enclosures)