



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 17, 2013

Ms. Priscilla Marquez  
Counsel for Ysleta Independent School District  
ScottHulse PC  
P.O. Box 99123  
El Paso, Texas 79999-9123

OR2013-08329

Dear Ms. Marquez:

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# 487684.

The Ysleta Independent School District (the "district"), which you represent, received a request for three categories of information pertaining to a specified bid to study outsourcing certain jobs. You state you are releasing some of the requested information. You claim the remaining requested information is excepted from disclosure under sections 552.104 and 552.107 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Gov't Code § 552.107(1). 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. ORD 676 at 6-7. First, a governmental body must demonstrate that the information

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<sup>1</sup>Although you 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). Furthermore, although you raise Texas Rule of Evidence 503, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to 552.022 of the Government Code is section 552.107 of the Government Code. See Open Records Decision Nos. 677 (2002), 676.

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 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 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 the submitted e-mails consist of communications between the district’s outside counsel and the district’s employees that were made for the purpose of facilitating the rendition of professional legal services to the district. You also inform us these communications were intended to be, and have remained, confidential. Based on your representations and our review, we conclude you have established the information at issue is protected by the attorney-client privilege. Therefore, the district may withhold the information at issue under section 552.107(1) of the Government Code.<sup>2</sup>

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,

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<sup>2</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against its release.

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 that reads "Paige Lay". The signature is written in a cursive, flowing style.

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/bhf

Ref: ID# 487684

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)