



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 16, 2014

Mr. S. Anthony Safi  
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.  
P.O. Box 1977  
El Paso, Texas 79999-1977

OR2014-01027

Dear Mr. Safi:

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# 511217 (EPISD Ref. No. 2013.402).

The El Paso Independent School District (the "district"), which you represent, received a request for the following categories of information from a specified period of time: (1) documents and communications that refer or relate to the value or valuation of property owned by any of four named companies, or their affiliates; (2) specified communications regarding the quality of services and/or appraisals provided by a named company; (3) specified communications with or by the Texas Comptroller of Public Accounts; (4) documents and communications related to a specified settlement; (5) documents and communications regarding funds that have been or will be refunded to a named company as part of the settlement; (6) documents and communications concerning certain budgets shortfalls as a result of the settlement; (7) documents and communications concerning the setting aside or accounting of funds by any taxing entity in anticipations of refunds; (8) documents and communications regarding the district's ability or intent to recover certain money through state revenue; (9) documents and communications concerning the subject matter of a specified news article; (10) documents and communications concerning any funds that a tax entity has received or will receive from the state as a result of a specified property overvaluation; and (11) documents and communications reflecting or concerning complaints about a named company's appraisals or services.<sup>1</sup> You state some of the requested information will be released. You claim most

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<sup>1</sup>You state the district sought and received clarifications of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may

of the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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 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

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not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup>Although you also raise section 552.101 of the Government Code in conjunction with the attorney-client privilege in 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). Additionally, although you cite to Texas Disciplinary Rule of Professional Conduct 1.03, based on the substance of your arguments, we understand you to claim Texas Disciplinary Rule of Professional Conduct 1.05. However, we note sections 552.101 and 552.107 do not encompass Texas Disciplinary Rule of Professional Conduct 1.05. Further, although you also assert the attorney-client privilege under rule 503 of the Texas Rules of Evidence and the work product privilege under rule 192.5 of the Texas Rules of Civil Procedure, we note the proper exceptions to raise when asserting the attorney-client privilege or work product privilege for information not subject to section 552.022 of the Government Code, as in this case, are sections 552.107 and 552.111 of the Government Code, respectively. *See* Open Records Decision Nos. 676 at 1-2, 677 (2002).

<sup>3</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

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 information you have indicated under section 552.107(1) consists of communications between attorneys for the district and attorney representatives, and district employees and district representatives. You state these communications 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 you have indicated under section 552.107(1) of the Government Code.<sup>4</sup> As you raise no exceptions for the remaining information, 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 511217

Enc. Submitted documents

c: Requestor  
(w/o enclosures)