



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2014

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
Transactions Division
Travis County
P.O. Box 1748
Austin, Texas 78767-1748

OR2014-20579

Dear Ms. Winn:

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# 542825.

The Travis County Attorney's Office (the "county attorney's office") received a request for seventeen categories of information pertaining to a certain item on the agenda of a specified meeting of the Joint Subcommittee of the Austin City Council, Austin Independent School District Board of Trustees ("AISD"), and Travis County Commissioners Court. You state the county attorney's office has provided some of the requested information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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

¹We 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 that submitted to this office.

in order to withhold the information at issue. See 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. 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 that 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, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. 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, 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).

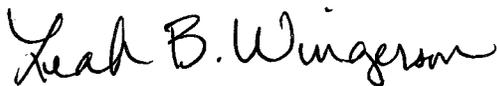
You assert the submitted information consists of privileged attorney-client communications made for the rendition of professional legal services. You explain Travis County, the City of Austin, and AISD are part of the Joint Subcommittee’s Judicial Supports Task Force (the “task force”) and work together on the task force’s Neighborhood Conference Committee Pilot program (the “pilot program”). You contend Travis County, the City of Austin, and AISD share a common interest with respect to their involvement with the task force and the pilot program. See *In re XL Speciality Ins. Co.*, 373 S.W.3d 46, 51 (Tex. 2012) (discussing common interest rule under attorney-client privilege). You state these communications were made in furtherance of the rendition of professional legal services to Travis County, as well as the City of Austin and AISD, regarding the task force. You further state these communications 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 county attorney’s

office may withhold the submitted information under section 552.107(1) of the Government Code.²

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, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 542825

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining argument against disclosure.