



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 18, 2014

Mr. John J. Janssen  
Counsel for the Llano Independent School District  
Powell & Leon, L.L.P.  
115 Wild Basin Road, Suite 106  
Austin, Texas 78746

OR2014-20926

Dear Mr. Janssen:

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# 543565.

The Llano Independent School District (the "district"), which you represent, received a request for information related to a named individual, including the individual's personnel file, all appraisals of the individual, all documents concerning the individual's conduct or performance, any complaints related to the individual, and any report created during any investigation of the individual. You claim the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, in a letter dated November 4, 2014, the district indicates it wishes to withdraw its request for an open records decision with respect to most of the requested information because the district has provided such information to the requestor. Thus, this ruling does not address the public availability of information the district no longer seeks to withhold.<sup>1</sup>

---

<sup>1</sup>As we make this determination, we need not address your argument under section 552.111 of the Government Code.

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. Open Records Decision No. 676 at 6–7 (2002). 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 a 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. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). 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).

The district states the responsive information consists of a communication involving an attorney for the district and the district's superintendent. The district states the communication was made for the purpose of facilitating the rendition of professional legal services to the district and the communication has remained confidential. Upon review, we find the district has demonstrated the applicability of the attorney-client privilege to the information at issue. Thus, the district may withhold the responsive information, which we have marked, under section 552.107(1) of the Government Code.<sup>2</sup>

---

<sup>2</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure.

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,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 543565

Enc. Submitted documents

c: Requestor  
(w/o enclosures)