



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 25, 2015

Mr. Rusty Meurer
Counsel for the Laredo Community College
Kazen, Meurer & Perez L.L.P.
P.O. Box 6237
Laredo, Texas 78042-6237

OR2015-12692

Dear Mr. Meurer:

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# 568759.

The Laredo Community College (the "college") received a request for all notes pertaining to a specified file and all e-mails, tapes, and notes related to a specified board meeting. You claim the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information made confidential by section 551.104 of the Open Meetings Act. Section 551.104 provides, in part, "the certified agenda or recording of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." *Id.* § 551.104(c). We note the college is not required to submit a certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks

¹Although you raise section 552.111 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

authority to review certified agendas or tapes of executive sessions to determine whether governmental body may withhold such information from disclosure under statutory predecessor to section 552.101). Thus, such information cannot be released to a member of the public in response to an open records request. See Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). You inform us that the requested information includes a tape recording from an executive session. Based on this representation, we find that the tape recording from this closed meeting is confidential under section 551.104(c) and must be withheld from disclosure under section 552.101 of the Government Code.

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 that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “to facilitate 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, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). 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.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit 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 assert the submitted information consists of communications between attorneys for the college, college employees, and the college's board of trustees. You further state the communications were made for the purpose of facilitating the rendition of professional legal services to the college, and the confidentiality of the communications has been maintained. Based on these representations and our review, we find the college may generally withhold the information we have marked under section 552.107(1) of the Government Code. We note, however, these e-mail strings include e-mail received from or sent to an opposing party in litigation. Furthermore, if the e-mails received from or sent to the non-privileged party are removed from the privileged e-mail strings and stand alone, they are responsive to the request for information. Therefore, if these non-privileged e-mails, which we have marked, are maintained by the college separate and apart from the otherwise privileged e-mail strings in which they appear, then the college may not withhold these non-privileged e-mails under section 552.107(1) of the Government Code.

Further, we find you have failed to demonstrate how any of the remaining information constitutes privileged communications made for the rendition of professional legal services. Accordingly, the college may not withhold any of the remaining information under section 552.107 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).² See Gov't Code § 552.137(a)-(c). We note subsection 552.137(c) provides subsection 552.137(a) "does not apply to an e-mail address provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent." *Id.* § 552.137(c)(1). Upon review, we find the college must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the college must withhold the tape recording from this closed meeting under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Open Meetings Act. The college may withhold the information we have marked under section 552.107 of the Government Code; however, if the non-privileged e-mails are maintained by the college separate and apart from the otherwise privileged e-mail strings in which they appear, then the college may not withhold these non-privileged e-mails under section 552.107. The college must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. As you raise no other exceptions to disclosure, the remaining information must be released.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in cursive script that reads "Katelyn Blackburn-Rader".

Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 568759

Enc. Submitted documents

c: Requestor
(w/o enclosures)