KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2015

Mr. James R. Evans, Jr.
Counsel for the Walker County Appraisal District
Hargrove & Evans, LLP
4425 Mopac South, Building 3, Suite 400
Austin, Texas 78735

OR2015-12949

Dear Mr. Evans:

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# 569192.

The Walker County Appraisal District (the "district"), which you represent, received a request for the following 1) information regarding properties owned by two named entities, 2) a list of tax exempt properties in Walker County, 3) documents justifying the granting of parsonage status to three named entities and denying parsonage status to a named entity, 4) a list of museums in Walker County owned by non-profit organizations that have been denied tax exemptions and the rationale behind these decisions, and 5) property taxes paid by for-profit entities operating on a named university campus. You indicate you have released or will release some information to the requestor. You claim the submitted 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.

[1]Although you also raise section 552.101 of the Government Code in conjunction with 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 raise Texas Rule of Evidence 503, we note the proper exceptions to raise when asserting the attorney-client privilege in this instance is section 552.107 of the Government Code. *See* ORD 676 at 1-2.

Initially, you state some of the information in Exhibit B-1 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-11140 (2015). In that ruling, we held the district must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the district must continue to rely on Open Records Letter No. 2015-11140 as a previous determination and withhold the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, we will address your arguments for the information not subject to Open Records Letter No. 2015-11140.

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 section encompasses information protected by other statutes, such as section 22.27 of the Tax Code, which provides:

> (a) Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the comptroller about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.
>
> (b) Information made confidential by this section may be disclosed:
>
> . . .
>
> (2) to the person who filed the statement or report or the owner of property subject to the statement, report, or information or to a representative of either authorized in writing to receive the information[.]

Tax Code § 22.27(a), (b)(2). We understand the district is an "appraisal office" for purposes of section 22.27(a). You state the remaining information in Exhibit B-1 consists of information provided to the district by the property owner in connection with appraisals of the owner's properties pursuant to section 22.27(a). We note a property owner or the owner's designated agent has a right of access to information that is confidential under section 22.27(a). *See* Attorney General Opinion JC-0424 (2001). In this instance, the requestor is the authorized representative of the owner of the properties at issue. Thus, the requestor has a right of access to the information pertaining to these properties that would otherwise be confidential under section 22.27. *See* Tax Code § 22.27(b)(2). Accordingly, the district may not withhold the remaining information in Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code.

Section 552.101 of the Government Code also encompasses section 11.48(a) of the Tax Code, which provides:

> (a) A driver's license number, personal identification certificate number, or social security account number provided in an application for an exemption filed with a chief appraiser is confidential and not open to public inspection. The information may not be disclosed to anyone other than an employee of the appraisal office who appraises property, except as authorized by Subsection (b).

Tax Code § 11.48(a). Upon review, we find the remaining information in Exhibit B-1 does not contain any information made confidential under section 11.48(a). Accordingly, no portion of the remaining information in Exhibit B-1 is excepted from disclosure under section 552.101 in conjunction with section 11.48(a).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. You contend the federal tax identification number in the remaining information in Exhibit B-1 is protected by common-law privacy. Upon review, we find you have not demonstrated how the information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the district may not withhold the information at issue under section 552.101 in conjunction with common-law privacy.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* 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. *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 "to facilitate 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, and lawyer representatives. *See* 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. Finally, 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. *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).

The district states the information in Exhibit B-2 consists of communications involving district counsel and district staff. The district states the communications were made for the purpose of facilitating the rendition of professional legal services to the district and these communications have remained confidential. Upon review, we find the district has demonstrated the applicability of the attorney-client privilege to the information at issue. Therefore, the district may generally withhold the information in Exhibit B-2 under section 552.107(1) of the Government Code. However, we note some of the e-mail strings at issue include an attachment received from a non-privileged party. Furthermore, if this attachment is removed from the e-mail strings and stands alone, it is responsive to the request for information. Therefore, if the district maintains this non-privileged attachment, which we have marked, separate and apart from the otherwise privileged e-mail strings in which it appears, then the district may not withhold this non-privileged attachment under section 552.107(1) of the Government Code.

In summary, the district must continue to rely on Open Records Letter No. 2015-11140 as a previous determination and withhold the information at issue in Exhibit B-1 in accordance with that ruling. The district may withhold generally withhold the information in Exhibit B-2 under section 552.107(1) of the Government Code. However, if the district maintains the non-privileged attachment separate and apart from the otherwise privileged e-mail strings in which it appears, then the district may not withhold the non-privileged attachment under section 552.107(1) of the Government Code. The district must release the remaining information.

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,

Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/cz

Ref: ID# 569192

Enc. Submitted documents

c: Requestor
(w/o enclosures)