



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 30, 2015

Ms. Lisa A. Brown
Counsel for Blinn College
Thompson & Horton, LLP
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027-7554

OR2015-15566

Dear Ms. Brown:

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# 573692.

Blinn College (the "college"), which you represent, received a request for any communications regarding Lyon College or the requestor. You claim that the submitted information is excepted from disclosure pursuant to section 552.107 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from an attorney representing the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See id.* § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the

¹Although you raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). In addition, although you also raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503 and Federal Rules of Evidence 501 and 502, this office has concluded section 552.101 does not encompass discovery privileges. *See* ORDs 676 at 1-2, 575 at 2. Further, in this instance, the information is properly addressed under section 552.107, rather than rule 503. *See* ORD 676 at 3.

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 “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 state the information you have marked constitutes or documents communications between college employees and attorneys for the college that were made for the purpose of facilitating the rendition of professional legal services to the college. You also state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find the college may withhold the information you have marked under section 552.107(1) of the Government Code. As you raise no further exceptions to disclosure, the college 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,

A handwritten signature in black ink, appearing to read 'Debbie K. Lee', with a long horizontal flourish extending to the right.

Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/cbz

Ref: ID# 573692

Enc. Submitted documents

c: Requestor
(w/o enclosures)