



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2015

Mr. Darin Darby
Counsel for Edgewood Independent School District
Escamilla & Poneck, L.L.P.
700 North St. Mary's Street, Suite 850
San Antonio, Texas 78205

OR2015-17555

Dear Mr. Darby:

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# 576750.

The Edgewood Independent School District (the "district"), which you represent, received three requests for employment, personnel, and termination records related to the requestor.¹ You claim the requested information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information was created after the district received the last request. This information, which we marked, is not responsive to the request. This ruling does not address the public availability of information that is not responsive to a request, and the district is not required to release non-responsive information.

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

¹We note the district sought clarification concerning the first request but has not received a response. See Gov't Code § 552.222(a). The district is not required to respond to the first request until it receives clarification. See *id.* § 552.222(d).

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 professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact 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). 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 the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication 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 submitted e-mail communications were sent between district employees and attorneys for the district in order to provide legal services to the district. You state the e-mails have remained confidential and will remain confidential. However, upon review of the information, we find some of the e-mails were also sent to the requestor’s attorney, who is not a privileged party. The district may not withhold those e-mails under section 552.107(1) of the Government Code. Nonetheless, we conclude the district has demonstrated the attorney-client privilege for the remaining responsive information. Accordingly, the district may withhold the remaining responsive information under section 552.107(1) of the Government Code.

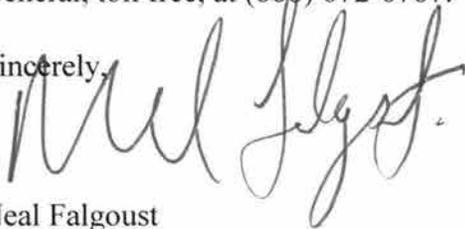
Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov’t Code § 552.137(a)–(c). Accordingly, the district must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner consents to its release.

In summary, with the exception of the non-privileged e-mails we marked, the district may withhold the responsive information under section 552.107(1) of the Government Code. The district must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner consents to its release. The district must release the remaining responsive 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 576750

Enc. Submitted documents

c: Requestor
(w/o enclosures)