



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 8, 2016

Ms. Catherine Brown Fryer  
Counsel for Bastrop County  
Bickerstaff Heath Delgado Acosta, LLP  
Building One, Suite 300  
3711 South MoPac Expressway  
Austin, Texas 78746

OR2016-02969

Dear Ms. Fryer:

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# 597587.

Bastrop County (the "county"), which you represent, received three requests from two different requestors for information relating to the Hidden Pines Fire. The county states it has released some of the requested information. The county claims some of the submitted information is excepted from disclosure under sections 552.107, 552.117, and 552.137 of the Government Code. We have considered the exceptions the county claims and reviewed the submitted information.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Gov't Code § 552.107. 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).

The county states the information it has marked consists of a communication involving an attorney for the county and a county employee. The county states the communication was made for the purpose of facilitating the rendition of professional legal services to the county and this communication has remained confidential. Upon review, we find the county has demonstrated the applicability of the attorney-client privilege to the information at issue. Thus, the county may withhold the information it has marked under section 552.107(1) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or 552.1175 of the Government Code.<sup>1</sup> Gov’t Code § 552.117(a)(2). Section 552.117 also protects a peace officer’s personal cellular telephone number if a governmental body does not pay for the cellular telephone service. *See Open Records Decision No. 670 at 6 (2001)* (section 552.117(a)(2) excepts from disclosure peace officer’s cellular telephone or pager number if officer pays for cellular telephone or pager service). The county informs us the service for one of the cellular telephone numbers at issue is not paid for by a governmental body. Accordingly, the county must withhold this cellular telephone number, which we have marked, under section 552.117(a)(2) of the Government Code. However, the county states stipends are provided by the county for the service for the remaining cellular telephone numbers. Thus, the county may not withhold these cellular telephone numbers under section 552.117(a)(2).

---

<sup>1</sup>Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

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). *See* Gov’t Code § 552.137(a)-(c). Upon review, we find the county must withhold the e-mail addresses it has marked and we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the county may withhold the information it has marked under section 552.107(1) of the Government Code. The county must withhold the cellular telephone number we have marked under section 552.117(a)(2) of the Government Code and the e-mail addresses it has marked and we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The county 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](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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 597587

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)