



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 20, 2016

Ms. Lynn Rossi Scott  
Counsel for Irving Independent School District  
Brackett & Ellis, P.C.  
100 Main Street  
Fort Worth, Texas 76102-3090

OR2016-11667

Dear Ms. Scott:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. This request was originally received by the Open Records Division (the "ORD") of this office and assigned ID# 611504. Because of Irving Independent School District's suit for declaratory relief from compliance with a previous letter ruling issued by the ORD that is the subject of this request, preparation of this ruling has been assigned to the Opinion Committee.

The Irving Independent School District ("IISD") received a public information request for records generated on or after February 11, 2016 in the following categories:

Any communication sent to or from a school board member concerning open records decision OR2016-03385.

Any other records created by a school board member[] concerning open records decision OR2016-03385.

Any communications sent to or from an employee in the department of communications concerning open records decision OR2016-03385.

Any other records created by an employee in the department of communications concerning open records decision OR2016-03385.

Any communications sent to or from superintendent Jose Parra concerning open records decision OR2016-03385.

Any other records created by Jose Parra concerning open records decision OR2016-03385.

Any communications sent to the office of the Texas Attorney General on or after February 11, 2016, concerning open records decision OR2016-03385.

You indicate public information responsive to this request, not otherwise subject to an exception, has been provided to the requestor. You claim the remaining information submitted in Exhibit B is excepted from disclosure under Government Code section 552.107 and Texas Rule of Evidence 503.<sup>1</sup> We have considered the exceptions you claim and reviewed the representative sample of the information submitted in Exhibit B.<sup>2</sup>

Initially, we note the IISD has redacted portions of the submitted information. You do not assert, nor does our review of the records indicate, that you have been authorized to withhold this information without seeking a ruling from this office. *See* TEX. GOV'T CODE § 552.301(a); Tex. Att'y Gen. ORD-673 (2001). Therefore, information must be submitted in a manner that enables us to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. *See* Tex. Att'y Gen. OR2016-00958, at 1. In the future, however, the IISD should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* TEX. GOV'T CODE § 552.302.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. *Id.* § 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. Tex. Att'y Gen. ORD-676 (2002) at 6–7. First, a governmental body must demonstrate “the information constitutes or documents a communication.” *Id.* at 7. Second, the communication must have been made for the purpose of facilitating “the rendition of professional legal services to the

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<sup>1</sup>Although you raise Texas Rule of Evidence 503 in connection with section 552.107, the ORD has determined that the proper exception to raise when asserting the attorney-client privilege is section 552.107. *See* Tex. Att'y Gen. ORD-676 (2002) at 1–3. Thus, we consider your submission under only section 552.107.

<sup>2</sup>This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent the other information is substantially different than that submitted to this office. *See* TEX. GOV'T CODE §§ 552.301(e)(1)(D), .302; Tex. Att'y Gen. ORD-499 (1988) at 6, ORD-497 (1988) at 4.

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. *See In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding), *mand. denied*, 12 S.W.3d 807 (Tex. 2000) (stating that the attorney-client “privilege does not apply if the attorney is acting in a capacity other than that of an 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)–(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 to only a confidential communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those . . . to whom disclosure is made to further the rendition of professional legal services to the client [or those] 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 [mand. denied]) (stating that “the issue of confidentiality focuses on the intent of the parties at the time the communications are made”). 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) (orig. proceeding) (recognizing that the privilege extends to the “entire communication, including facts contained therein”).

You state the information you have marked in Exhibit B consists of or reveals communications made for the purpose of facilitating the rendition of professional legal services to IISD, its Board of Trustees, and the IISD’s communication department. You tell us the communications in Exhibit B contain legal advice and counsel from the IISD’s attorneys regarding an inquiry from the United States Department of Justice (“DOJ”) pertaining to a high school student’s arrest and a request for information related to the DOJ inquiry. You tell us the communications also relate to IISD deliberations concerning its petition for declaratory relief from compliance with the previous letter ruling from the ORD that is the subject of the current request. You identify those between whom these communications were made as IISD attorneys and various IISD representatives. You state further that these communications have been shared with only the necessary IISD legal counsel and IISD representatives and that the communications have not been disclosed to any non-privileged parties. Based on your representations and our review, we conclude that the

information you have provided under Exhibit B is subject to the attorney-client privilege and may be withheld under section 552.107(1) of the Government Code.

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,



Charlotte M. Harper  
Assistant Attorney General  
Opinion Committee

CMH/sdk

Ref: ID# 611504

Enc. Submitted documents

c: Requestor  
(w/o enclosures)