



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2010

Mr. John-Peter Lund
O'Hanlon, McCollom & Demerath
For Lancaster Independent School District
808 West Avenue
Austin, Texas 78701

OR2010-02299

Dear Mr. Lund:

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# 370359.

The Lancaster Independent School District (the "district"), which you represent, received a request for four categories of information pertaining to the requestor and to training received by four named individuals. You state that you have made the majority of the requested information available to the requestor. You claim that the submitted 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, you inform us that most of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-17259 (2009). In that ruling, we determined that with the exception of the marked non-privileged e-mails that exist, the district may withhold the information at issue in that ruling under sections 552.107 and 552.137 of the Government Code. We have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based. We therefore conclude that the district may continue to rely on Open Records Letter No. 2009-17259 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (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 previous attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the present request seeks additional information that was not addressed in Open Records Letter No. 2009-17259; therefore, we will consider your argument against disclosure of this 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 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 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 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). 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.*, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of 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, no pet.). 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).

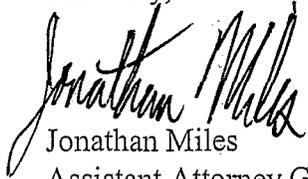
You state the submitted e-mail communications were made between the district and legal counsel representing the district in connection with the rendition of professional legal services to the district. You have identified the parties to the communications. You state the communications were intended to remain confidential and the confidentiality of the communications has been maintained. Based on your representations and our review, we find the district has established the applicability of section 552.107(1) to the submitted information. Therefore, the district may withhold the submitted information under section 552.107 of the Government Code.

In summary, the district may continue to rely on Open Records Letter No. 2009-17259 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The district may withhold the information that was not at issue in Open Records Letter No. 2009-17259 under section 552.107 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 370359

Enc. Submitted documents

c: Requestor
(w/o enclosures)