



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 18, 2010

Mr. Mark L. Bryza  
K&L Gates, LLP  
1717 Main Street, Suite 2800  
Dallas, Texas 75201-7342

OR2010-02481

Dear Mr. Bryza:

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# 370513.

The Denton County Fresh Water Supply District No. 1-B (the "district"), which you represent, received a request for seven categories of information pertaining to district board members and contracts entered into by the district. You claim that portions of the submitted information are excepted from disclosure under section 552.107 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the district has only submitted information responsive to the first category of the request. To the extent any additional responsive information existed on the date the district received this request, we assume that it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code § 552.301(a), 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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

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<sup>1</sup>Although the district initially claims that the submitted information is excepted from disclosure under sections 552.101 of the Government Code through section 552.151 of the Government Code, the district has only provided arguments in support of section 552.107 of the Government Code. Therefore, we assume the district has withdrawn its claim that the remaining exceptions apply to any of the submitted information.

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 e-mail communications you have marked 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 e-mails you have marked. Therefore, the district may withhold the e-mails you have marked under section 552.107 of the Government Code.

We note a portion of the remaining information may be subject to section 552.137 of the Government Code.<sup>2</sup> Section 552.137 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

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

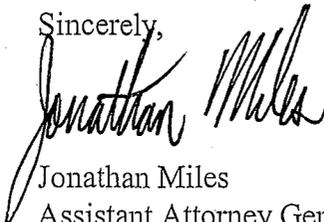
address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). We have marked e-mail addresses that are not of the type specifically excluded by section 552.137(c). Therefore, the district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner of an e-mail address affirmatively consents to its release.<sup>3</sup>

In summary, the district may withhold the e-mails you have marked under section 552.107 of the Government Code. The district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner of an e-mail address affirmatively consents to its release. The remaining information must be released.

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](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# 370513

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.