ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2010

Ms. Cynthia S. Martinez
Legal/Records Manager
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2010-06541

Dear Ms. Martinez:

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# 378471.

The Capital Metropolitan Transportation Authority (the "authority") received a request for specified training materials distributed during a specified period of time and internal correspondence pertaining to budget, personnel, vehicles, or other equipment for MetroAccess service. You state you will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted representative sample of information.[2]

Initially, you inform us the authority asked the requestor to "clarify or narrow his overbroad request." We note that a governmental body may communicate with a requestor for the

[1]Although you also raise the attorney-client privilege under rule 503 of the Texas Rules of Evidence, we note that section 552.107 is the proper exception to raise for your attorney-client privilege claim in this instance. *See* Open Records Decision No. 676 (1988).

[2]We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

purpose of clarifying or narrowing a request for information. *See* Gov't Code § 552.222(b) (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, No. 07-0931, 2010 WL 571972, at *3 (Tex. Feb. 19, 2010). However, a governmental body must make a good faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561 at 8 (1990). You state the authority has not received a response to its request for clarification. In this case, as you have submitted responsive information for our review and raised an exception to disclosure for this information, we consider the authority to have made a good faith effort to identify the information that is responsive to the request, and we will address the applicability of the claimed exception to the submitted information. We further determine the authority has no obligation at this time to release any additional information that may be responsive to the part of the request for which it has not received clarification. However, if the requestor responds to the request for clarification, the authority must again seek a ruling from this office before withholding any additional responsive information from the requestor. *See City of Dallas*, No. 07-0931, 2010 WL 571972, at *3.

Section 552.107(1) of the Government Code protects information that comes 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. *See* 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 "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 that of providing or facilitating professional legal services to the client governmental body. *See In re Texas 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. *See* 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, 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. *See 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 inform us that the submitted e-mails and attachments consist of communications between the authority's attorneys and authority staff. You have identified the parties to the communications. You state that these communications were made in the furtherance of the rendition of professional legal services to the authority and were not disclosed to any other person other than the person to whom they were made. Based on your representations and our review of the information at issue, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Therefore, the authority may withhold the submitted information 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,

Paige Lay

Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 378471

Enc. Submitted documents

cc: Requestor
(w/o enclosures)