



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 5, 2010

Ms. Peggy Rudd  
Director and Librarian  
Texas State Library and Archives Commission  
P.O. Box 12927  
Austin, Texas 78711-2927

OR2010-15126

Dear Ms. Rudd:

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# 395810.

The Texas State Library and Archives Commission (the "commission") received a request for information from the General Counsel's execution files from former governor George W. Bush's administration pertaining to three named individuals. You explain the requestor has agreed to the redaction of some of the responsive information and state some of the remaining responsive information will be made available to the requestor.<sup>1</sup> You state the Office of the Governor (the "governor") seeks to withhold the submitted information under sections 552.107 and 552.111 of the Government Code.<sup>2</sup> We have also received arguments from the governor. *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exceptions and reviewed the submitted information.

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<sup>1</sup>You assert the requestor has agreed to the redaction of information under section 552.101 of the Government Code in conjunction with common-law privacy; section 508.313 of the Government Code; section 611.002 of the Health and Safety Code; section 159.002 of the Occupations Code; section 552.111 of the Government Code (for drafts of press releases that were released in final form); and section 552.137 of the Government Code. *See* Gov't Code § 552.222 (governmental body may ask requestor to clarify or narrow scope of request).

<sup>2</sup>Although the governor raises section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

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 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. *See* 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) (attorney-client privilege does not apply if attorney acting in 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. *See* 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 only to 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 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 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 governor claims the submitted information is excepted from disclosure under the attorney-client privilege. The governor asserts the information at issue consists of confidential communications between the general counsel and the governor that were made in furtherance of the rendition of professional legal services to the governor. The governor also asserts these communications were intended to be and have remained confidential. All parties to the communications are identified. Based on your representations and our review of the information at issue, we conclude the submitted information may be withheld under section 552.107(1).<sup>3</sup>

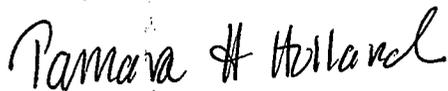
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<sup>3</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure.

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,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

TLH/em

Ref: ID# 395810

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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