



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 21, 2010

Ms. Caroline E. Cho  
Assistant County Attorney  
Williamson County  
405 Martin Luther King Street, Box 7  
Georgetown, Texas 78626

OR2010-15995

Dear Ms. Cho:

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# 397657.

Williamson County and the Williamson County Attorney's Office (collectively the "county") received a request for twenty-one categories of information pertaining to the T. Don Hutto Residential Facility created during specified time periods. You state the county has released some of the requested information. You also state the county does not have information responsive to some of the categories of requested information.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under section 552.107 of the Government Code. In addition, you assert that release of some of the submitted information may implicate the interests of the United States Department of Homeland Security Immigration and Customs Enforcement ("ICE"). Accordingly, you state you notified ICE of this request for information and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

received comments from ICE. We have considered the submitted arguments and reviewed the submitted information.

You inform us some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-12455 (2010). In that ruling, we concluded the following: (1) the county must withhold the marked information under section 552.101 of the Government Code in conjunction with section 236.6 of title 8 of the Code of Federal Regulations; (2) with the exception of the marked non-privileged e-mails that exist separate and apart from the submitted e-mail strings, the county may withhold the information it marked under section 552.107 of the Government Code; and (3) the remaining information must be released. You represent the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, we agree the county must continue to rely on Open Records Letter No. 2010-12455 as a previous determination and withhold or release the information at issue in that ruling in accordance with Open Records Letter No. 2010-12455. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note that in its comments to this office, ICE states it does not object to release of the information at issue. Accordingly, the county may not withhold any of the submitted information based upon the interests of ICE.

You assert the information you have marked is excepted from disclosure under section 552.107 of the Government Code. Section 552.107(1) 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. 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. *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). 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, lawyer representatives, and a lawyer representing another party in a pending action and concerning

a matter of common interest therein. *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. *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 information you have marked consists of communications between county attorneys, county commissioners, county judges, and county employees that were made for the purpose of rendering professional legal advice to the county. Further, you state these communications were made in confidence and have maintained their confidentiality. You have identified the privileged parties to these communications. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information you marked. Accordingly, the county may generally withhold the marked information under section 552.107 of the Government Code. However, we note some of the submitted e-mail strings include communications with non-privileged parties. If the communications with these non-privileged parties, which we have marked, exist separate and apart from the e-mail strings in which they appear, then the county may not withhold the communications with the non-privileged parties under section 552.107(1).

In summary, we agree the county must continue to rely on Open Records Letter No. 2010-12455 as a previous determination and withhold or release the information at issue in that ruling in accordance with Open Records Letter No. 2010-12455. The county may withhold the information you marked under section 552.107 of the Government Code; however, to the extent the non-privileged e-mails we marked exist separate and apart from the submitted e-mail chains, they may not be withheld under section 552.107. 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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 397657

Enc. Submitted documents

c: Requestor  
(w/o enclosures)