



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2010

Ms. Neera Chatterjee
Public Information Coordinator
Ms. Zeena T. Angadicheril
Attorney
University Of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2010-16987

Dear Ms. Chatterjee and Ms. Anagdicheril:

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# 399754 (OCG# 132903).

The University of Texas Health Science Center at Houston (the "university") received a request for all correspondence by the university's Chief Operating and Financial Officer and Office of Legal Affairs utilized to disclose the terms and existence of an agreement between the university and the requestor. You state the university will release some of the requested information. 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 representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor objects to the university submitting a representative sample in this instance. However, the Act allows a governmental body to submit a representative sample of the information it seeks to withhold if a voluminous amount of information was

¹We 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.

requested. *Id.* § 552.301(e)(1)(D); *see also* ORD 499 at 6 (if documents requested are numerous and repetitive, governmental body should submit a representative sample), ORD 497 at 4. Accordingly, we conclude the university has complied with the procedural requirements of the Act in submitting a representative sample of the information it seeks to withhold, and we will consider the university's argument against the disclosure of the requested information.

Section 552.107(1) 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 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 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.* 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 submitted information consists of communications between the university's attorneys and university employees, whom you have identified. You further state the communications were made to facilitate the rendition of legal advice to the university. You state these communications were intended to be confidential and their confidentiality has been maintained. Based on your representations and our review, we conclude that the submitted information consists of privileged attorney client communications. Thus, section 552.107 is applicable to the submitted information. We note the requestor asserts he has a special right of access to the information at issue under section 552.023 of the

Government Code. Section 552.023 provides that a person or a person's authorized representative has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest. Gov't Code § 552.023. However, section 552.107 is not intended to protect the privacy of any individual. *See id.* §§ 552.107 (section 552.107 intended to protect information encompassed by the attorney-client privilege); *see also id.* § 552.023(b) (governmental body may assert provisions of Act or other law that are not intended to protect person's privacy interests to withhold information to which requestor may otherwise have a special right of access). As such, the requestor does not have a special right of access to the information at issue under section 552.023. Accordingly, we conclude the university 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 399754

Enc. Submitted documents

c: Requestor
(w/o enclosures)