



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 16, 2010

Ms. Andrea Sheehan  
Ms. Elisabeth A. Donley  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2010-17368

Dear Ms. Sheehan and Ms. Donley:

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# 400145.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for the following three categories of information related to properties on a specified street owned or formerly owned by the district: (1) documents pertaining to appraisals done in 2009 and 2010; (2) documents pertaining to bids received in 2010; and (3) notices of disclosure sent to bidders in 2010. You state the district has made some of the requested information available to the requestor with social security numbers redacted under section 552.147(b) of the Government Code and bank account and routing numbers redacted pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the information submitted in Exhibit B-1 is excepted from disclosure under section 552.107 of

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). Additionally, Open Records Decision No. 684 is a previous determination to all governmental bodies, authorizing the withholding of ten categories of information, including bank account and routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

the Government Code.<sup>2</sup> Although you take no position on the public availability of the appraisals submitted in Exhibit B-2, you state release of this information may implicate the proprietary interests of Jackson Claborn, Inc. ("JCI"). You have notified JCI of the district's receipt of the request for information and of the company's right to submit arguments to this office as to why the information at issue should not be released. See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Gov't Code § 552.107(1). 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, 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

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<sup>2</sup>Although you also raise Texas Rule of Evidence 503, because the information in Exhibit B-1 is not subject to section 552.022 of the Government Code, the information is properly addressed under section 552.107. See Open Records Decision No. 676 at 3 (2002); see also Gov't Code § 552.022 (listing categories of information that are expressly public under the Act and must be released unless confidential under "other law").

<sup>3</sup>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.

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 claim Exhibit B-1 is excepted under section 552.107. This information consists of e-mail correspondence between individuals you identify as district employees and outside attorneys for the district. You represent these e-mails were communicated for the purpose of providing legal advice to the district. You also represent these e-mails were intended as confidential communications, and that their confidentiality has been maintained. Therefore, based on your representations and our review, we agree the information in Exhibit B-1 is privileged, and the district may withhold this information under section 552.107 of the Government Code.

An interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov’t Code* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from JCI explaining why any portion of the company’s submitted information should not be released. Therefore, we have no basis to conclude JCI has any protected proprietary interest in the information submitted in Exhibit B-2. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Consequently, the district may not withhold any portion of the information in Exhibit B-2 on the basis of any proprietary interest JCI may have in the information.

However, Exhibit B-2 contains a private e-mail address that is subject to section 552.137 of the Government Code.<sup>4</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 address is of a type specifically excluded by subsection (c). *See Gov’t Code*

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<sup>4</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).

§ 552.137(a)-(c). The e-mail address we marked does not appear to be excepted under subsection (c). Accordingly, the district must withhold this e-mail address under section 552.137, unless the owner of the e-mail address affirmatively consents to its release.<sup>5</sup>

Additionally, some of the information in Exhibit B-2 may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district may withhold the information submitted in Exhibit B-1 under section 552.107 of the Government Code. The district must withhold the e-mail address we marked in Exhibit B-2 under section 552.137 of the Government Code. The remaining information in Exhibit B-2 must be released in accordance with copyright law.

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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tp

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<sup>5</sup>Another of the ten categories of information Open Records Decision No. 684 authorizes governmental bodies to withhold without the necessity of requesting an attorney general decision is e-mail addresses of members of the public under section 552.137 of the Government Code.

Ref: ID# 400145

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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