



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 19, 2011

Ms. Sylvia F. Hardman-Dingle  
General Counsel  
Texas Department of Assistive and Rehabilitative Services  
4800 North Lamar Blvd., Suite 300  
Austin, Texas 78756

OR2011-00912

Dear Ms. Hardman-Dingle:

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# 406822 (PIA #2010 10/29-1).

The Texas Department of Assistive and Rehabilitative Services (the "department") received a request for all information that was collected on complaints against the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note exhibit 4 includes purchase orders that fall within the scope of section 552.022 of the Government Code. Section 552.022(a)(3) provides for required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body," unless the information is expressly confidential under other law. *Id.* § 552.022 (a)(3). You raise section 552.101 of the Government Code for exhibit 4, which is other law that makes information confidential for the purposes of section 552.022(a)(3). Therefore, we will determine whether the department must withhold any of the information subject to 552.022 in addition to the remaining information under section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

Section 552.101 encompasses information protected by other statutes, such as section 111.057 of the Human Resources Code, which provides as follows:

(a) Except for purposes directly connected with the administration of health and human service programs and in accordance with regulations, it is unlawful for a person to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, names of, or any information directly or indirectly derived from records concerning persons applying for or receiving health and human services.

(b) The [department] is authorized to provide client and other information to and receive client and other information from any state agency for the purpose of increasing and enhancing services to clients and improving agency operations, except where federal law or regulations preclude such sharing.

(c) The [department] shall adopt rules to carry out the purposes of this section.

Hum. Res. Code § 111.057.<sup>1</sup> Information protected by section 111.057 “is not to be disclosed directly or indirectly, other than in the administration of the rehabilitation programs, unless the consent of the consumer has been obtained in writing.” 40 T.A.C. § 101.117(a)(3). Initially, we note exhibit 4 contains a signed consent form from a person who receives health and human services consenting to the release of her information to the requestor. If the department finds this consent form complies with the consent provision in section 101.117(a)(3) of title 40 of the Texas Administrative Code, then section 101.117(a)(3) authorizes release of the consenting individual’s information protected by section 111.057 of the Human Resource Code. If the department finds this consent form does not comply with the consent provision in section 101.117(a)(3) of title 40 of the Texas Administrative Code, then the department must withhold the consenting individual’s information, which we have marked in exhibit 4, under section 552.101 of the Government Code in conjunction with section 111.057 of the Human Resource Code. Next, we note because the purchase orders subject to section 552.022(a)(3) contain information directly or indirectly derived from records concerning persons applying for or receiving health and human services, the information we have marked within the purchase orders in exhibit 4 must be withheld under section 552.101 of the Government Code in conjunction with section 111.057 of the Human Resource Code. The remainder of the information in the purchase orders in exhibit 4 must be released to the requestor under section 552.022(a)(3) of the Government Code. Furthermore, while we agree some of the information you have marked in exhibits 4 and 5 is confidential under section 552.101 of the Government Code

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<sup>1</sup>The 78th Legislature transferred all powers, duties, functions, programs, and activities of the former Texas Rehabilitation Commission to the department effective March 1, 2004. See Act of June 1, 2003, 78th Leg., R.S., ch. 198, §§ 1.01, 1.21, 1.26, 2003 Tex. Gen. Laws 611, 612, 641.

in conjunction with section 111.057 of the Human Resources Code, you have failed to demonstrate how the rest of the information you have marked is information directly or indirectly derived from records concerning persons applying for or receiving health and human services. Accordingly, we conclude the department must only withhold the information we have marked in exhibits 4 and 5 under section 552.101 of the Government Code in conjunction with section 111.057 of the Human Resource Code.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege.<sup>2</sup> 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. 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. 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 exhibit 6 consists of a communication between and among individuals identified as department attorneys and staff and department personnel authorized to seek legal advice from department attorneys. You state the communication in exhibit 6 was made for the

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<sup>2</sup>We note discovery privileges under the Texas Rules of Evidence, such as the attorney-client privilege, does not make information confidential for the purpose of section 552.101 of the Government Code, and therefore should not be asserted under section 552.101.

purpose of facilitating the rendition of legal services, and was intended to be, and has remained, confidential. Accordingly, based on your representations and our review, we find the information within exhibit 6 consists of an attorney-client privileged communication. Therefore, we find exhibit 6 may be withheld in its entirety under section 552.107 of the Government Code.

We note section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117, .024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. You inform us three employees mentioned in the remaining information, one of whom is the requestor, timely elected confidentiality under section 552.024. We note the requestor has a right of access to her own personal information under section 552.023 of the Government Code and the department may not withhold it from her under section 552.117(a)(1). *See* Gov't Code § 552.023. Accordingly, the department must withhold the personal information we have marked in exhibit 4 pertaining to the employees who are not the requestor under section 552.117(a)(1) of the Government Code. However, the remaining information you have marked under section 552.024 of the Government Code pertains to the requestor. Accordingly, the department may not withhold any of the remaining information you have marked in exhibit 4 under section 552.117 of the Government Code.

We also note exhibits 4 and 5 contain e-mail addresses. Section 552.137 provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). We have marked e-mail addresses that are not of the types specifically excluded by section 552.137(c) of the Government Code. Accordingly, the department must withhold the e-mail addresses<sup>3</sup> we have marked in exhibits 4 and 5 under section 552.137 of the Government Code, unless the owners consent to disclosure.<sup>4</sup>

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<sup>3</sup>In Open Records Decision No. 684 (2009), this office issued a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including the e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision.

<sup>4</sup>As our ruling is dispositive, we do not address your claim under section 552.102 of the Government Code.

In summary, if the department finds the consent form in exhibit 4 complies with the consent provision in section 101.117(a)(3) of title 40 of the Texas Administrative Code, then section 101.117(a)(3) authorizes release of the consenting individual's information protected by section 111.057 of the Human Resource Code. If the department finds this consent form does not comply with the consent provision in section 101.117(a)(3) of title 40 of the Texas Administrative Code, then the department must withhold the consenting individual's information, which we have marked in exhibit 4, under section 552.101 of the Government Code in conjunction with section 111.057 of the Human Resource Code. Except for the information we have marked under section 552.101 of the Government Code in conjunction with section 111.057 of the Human Resource Code, the department must release the remainder of the information in the purchase orders in exhibit 4 under section 552.022(a)(3) of the Government Code. The department must withhold the rest of the information we have marked in exhibit 4 and the information we have marked in exhibit 5 under section 552.101 of the Government Code in conjunction with section 111.057 of the Human Resource Code. The department may withhold exhibit 6 in its entirety under section 552.107 of the Government Code. The department must withhold the personal information we have marked in exhibit 4 pertaining to the employees who are not the requestor under section 552.117(a)(1) of the Government Code. The department must withhold the e-mail addresses we have marked in exhibits 4 and 5 under section 552.137 of the Government Code, unless the owners consent to disclosure. The remaining information must be released to the requestor.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/vb

Ref: ID# 406822

Enc. Submitted documents

c: Requestor  
(w/o enclosures)