ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2011

Mr. Rusty Meurer
KM&P
For Laredo Community College
P.O. Box 6237
Laredo, Texas 78042-6237

OR2011-01350

Dear Mr. Meurer:

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# 407013.

The Laredo Community College (the "college"), which you represent, received a request for all correspondence and related documents between the college and the Laredo Housing Authority regarding payment in lieu of taxes from 2007 to date. You state the college is redacting bank account and bank routing numbers under section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).[1] You state the college has released some information to the requestor. 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 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

[1]Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account and bank routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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 seek to withhold the e-mails in Exhibit B under section 552.107 of the Government Code. You state this information constitutes communications made for the purposes of rendering legal services. You state the communications were made entirely between the college and the college's representatives and the college's attorneys and have identified these individuals. You state these communications were all intended to be and have remained confidential. Upon review, we find the e-mails we have marked constitute privileged attorney-client communications. We conclude the college may generally withhold the marked e-mails under section 552.107 of the Government Code. However, we note some of the individual e-mails in two of the otherwise privileged e-mail chains were sent or received by either attorneys whom you have not identified or representatives from the Laredo Housing Authority. You have not explained the college's relationship with these parties or how they are privileged with respect to the communications to which they are a party. Accordingly, to the extent these non-privileged e-mails, which we have marked, exist separate and apart from the submitted e-mail chains, they may not be withheld under section 552.107. We further note the remaining e-mails indicate they were communicated with an employee of Webb County. You also have not explained the college's relationship

to this individual or how she is privileged with respect to the communications to which she is a party. Accordingly, we find section 552.107 is not applicable to these remaining e-mails, and the college may not withhold them on this basis.

We note that the non-privileged e-mails contain private e-mail addresses subject to section 552.137 of the Government Code.[2] 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 § 552.137(a)-(c). We note section 552.137 is not applicable to an e-mail address of a person who has a contractual relationship with a governmental body or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses we have marked are not of the types specifically excluded by section 552.137(c). Accordingly, the college must withhold the marked e-mail addresses under section 552.137, unless the owners have affirmatively consented to their release.[3] *See id.* § 552.137(b).

In summary, the college may generally withhold the e-mails we have marked under section 552.107 of the Government Code. However, to the extent the non-privileged e-mails we have marked in the otherwise privileged e-mail chains exists separate and apart from these privileged e-mail chains, these e-mails may not be withheld under section 552.107 of the Government Code. The college must withhold the e-mail addresses we have marked in the non-privileged e-mails under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release. The remaining non-privileged e-mails 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, 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

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[2]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987),470 (1987).

[3]We note Open Records Decision No. 684 also authorizes governmental bodies to withhold e-mail addresses of members of the public under section 552.137 of the Government Code without the necessity of requesting an attorney general decision.

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# 407013

Enc. Submitted documents

c: Requestor
(w/o enclosures)