



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2011

Mr. Louis T. Rosenberg
Law Offices of Louis T. Rosenberg, P.C.
De Mazieres Building
322 Martinez Street
San Antonio, Texas 78205

OR2011-01370

Dear Mr. Rosenberg:

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# 407066 (File No. 08-05-H).

The Bexar County Emergency Services District No. 6 (the "district"), which you represent, received a request for fifteen categories of information, including all correspondence/communication with board members and others pertaining to district business for the last 18 months; and all correspondence/communication pertaining to the purchase and use of the land/property being used for the South Bexar Community/Evacuation center. You state with the exception of the information in Attachment 6, the requested information has been released. You claim the information in Attachment 6 is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107(1) of the Government Code 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. *See* Open Records Decision No. 676 at 6-7 (2002). 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. *See* 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. *See 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 capacity other than that of attorney). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *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. *See 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 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 in Attachment 6 constitutes communications from the district’s representative to the district’s attorneys and legal advice between the district’s attorney and a representative of the district. We understand these communications were intended to be confidential and the confidentiality of the communications has been maintained. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information in Attachment 6. Thus, the agency may withhold that information under section 552.107 of the Government Code.¹

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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 407066

Enc. Submitted documents

c: Requestor
(w/o enclosures)