



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 23, 2011

Ms. Neera Chatterjee  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2011-02722

Dear Ms. Chatterjee:

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# 409834 (OGC # 134544).

The University of Texas Health Science Center at Houston (the "university") received a request for any records in the possession of the Department of Internet Technology and in the possession of: (1) a named individual, for the time period beginning on January 1, 2001 through December 2, 2010, pertaining to the requestor; (2) the university, for the time period beginning on January 1, 2008 through December 2, 2010, pertaining to (a) any and all insurance providers for the university, (b) any and all policies that in any way pertain to disability, disability accommodation, discrimination, and retaliation, and (c) the university causing its Handbook of Operating Procedures ("HOOP") to be inaccessible to the public; (3) the University of Texas Graduate School of Public Health, for the time period beginning January 1, 2001 through December 2, 2010, pertaining to letters used to notify any student that they have either missed an evaluation meeting or have a hold blocking their registration; and (4) the University of Texas at Houston Police Department, for the time period beginning January 1, 2010 through December 2, 2010, pertaining to an e-mail sent by the requestor to a named individual. You state the university will release information responsive to items (1), (2)(b), and (4). You state the university has no information responsive to item (3). You claim the submitted information responsive to item (2)(c) is excepted from disclosure under

sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the university sought clarification for item (2)(a) of the request for information. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request). You state the university has not received clarification of item (2)(a). Thus, we find the university is not required to release information in response to item (2)(a) of the request. However, if the requestor clarifies this item of the request, the university must seek a ruling from this office before withholding any responsive information from the requestor. *See City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010).

Section 552.107(1) of the Government Code 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. 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

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<sup>1</sup>We assume the “representative sample” of information 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 those records contain substantially different types of information than those submitted to this office.

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 individuals identified as university employees and legal staff. You state the communications were made for the purpose of facilitating the rendition of legal services, and were intended to be, and have remained, confidential. Based on these representations and our review, we agree the submitted information may be withheld under section 552.107 of the Government Code.<sup>2</sup>

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/eeg

Ref: ID# 409834

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure for the submitted information.