



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 11, 2011

Ms. Stephanie S. Rosenberg  
General Counsel  
Humble Independent School District  
P.O. Box 2000  
Humble, Texas 77347

OR2011-03400

Dear Ms. 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# 411100.

The Humble Independent School District (the "district") received two requests from the same requestor for documentation of all occasions in 2010 when, during the process of requesting an opinion from the Office of the Attorney General, the district, or its contractors, have searched for and provide the home address of a requestor of public information instead of utilizing the address provided. You state the district is providing some of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.107 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

We note some of the submitted information, which you have marked as Exhibit B-1, was the subject of a prior request for information received by the district, as a result of which this

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with the attorney-client privilege under Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Further, we note that while you claim some information is excepted under sections 552.301(e-1) and 552.3035 of the Government Code, sections 552.301 and 552.3035 are not exceptions to disclosure under the Act. See Gov't Code §§ 552.301(e-1) (requires that a governmental body send to the requestor a copy of its written comments to the attorney general), .3035 (attorney general may not disclose to requestor or public any information submitted to attorney general under section 552.301(e)(1)(D)).

office issued Open Records Letter No. 2011-02204 (2011). In Open Records Letter No. 2011-02204, we concluded the district may withhold the information we marked under section 552.107 of the Government Code. We understand the law, facts, and circumstances on which this prior ruling was based have not changed. Accordingly, with respect to this information, the district may continue to rely on this ruling as a previous determination and withhold or release the previously ruled upon information in accordance with Open Records Letter No. 2011-02204. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). With respect to the submitted information that was not the subject of this prior ruling, we will consider your argument against disclosure.

You claim portions of the remaining information, which you have marked in Exhibit A-1, are excepted from disclosure under section 552.107(1) of the Government Code. 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 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 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 that the information you have marked under section 552.107 reveals communications between an attorney for the district and district administrators and staff. You represent that these communications were made for the purpose of facilitating the rendition of professional legal services to the district. You also represent the confidentiality of these communications has been maintained. *See Open Records Decision No. 516 (1989)* (release of information by one state agency to another state agency is not a release to the public for the purposes of section 552.007 of the Government Code); *see also Gov't Code §§ 552.301(e-1), .3035*. Upon review, we find the district may withhold the information we have marked under section 552.107 of the Government Code. However, you have not shown the remaining information at issue constitutes communications between privileged parties that were made for facilitating the rendition of professional legal services. Accordingly, the district may not withhold this information under section 552.107 of the Government Code.

In summary, district may continue to rely on Open Records Letter No.2011-02204 as a previous determination and withhold or release the previously ruled upon information in accordance with this ruling. The district may withhold the information we have marked under section 552.107 of the Government Code. The remaining information 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](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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/tf

Ref: ID# 411100

Enc. Submitted documents

c: Requestor  
(w/o enclosures)