



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 6, 2011

Ms. Cindy J. Crosby
Bickerstaff Heath Delgado Acosta LLP
3711 South MoPac Expressway
Building One, Suite 300
Austin, Texas 78746

OR2011-06294

Dear Ms. Crosby:

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# 417254.

The County of Bastrop (the "county"), which you represent, received two requests for communications between certain named individuals regarding the Colorado Riverland Ranch Airport, the Central Texas Airport, Green Corporate Centers, Eco-merge, and the Cottonwood Creek WCID proposals. Both requestors have excluded documents provided in response to previous Public Information requests.¹ You state you will provide some of the requested information to the requestors. You claim that the remaining requested information is excepted from disclosure under section 552.107 of the Government Code.² You also indicate that release of the remaining information may implicate the proprietary interests of Carpenter and Associates ("Carpenter"). Accordingly, you have notified Carpenter of the request and of the company's right to submit arguments to this office as to why the

¹You state the county sought and received clarification from the first requestor regarding the excluded information. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²Although you also raise section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence, we note that section 552.101 does not encompass discovery privileges. *See* Open Records Decision No. 676 at 1-3 (2002). We further note section 552.101 does not encompass rule 1.05 of the Texas Disciplinary Rules of Professional Conduct.

information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exception 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). 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. *See* 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. *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 submitted information constitutes communications amongst county staff, elected officials, and an attorney representing the county that were made for the purpose of providing legal services to the county. You state the communications were intended to be confidential and have remained confidential. Although you have not identified the parties to the communications, we are able to discern the identities of the privileged parties from the

submitted documents. Based on your representations and our review, we find the submitted information constitutes privileged attorney-client communications, and may be withheld under section 552.107(1) of the Government Code.

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 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/em

Ref: ID# 417254

Enc. Submitted documents

cc: Requestors
(w/o enclosures)

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(w/o enclosures)