ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2011

Ms. Dianna D. Bowen
Fisher & Phillips LLP
500 North Akard Street, Suite 3550
Dallas, Texas 75201

OR2011-09176

Dear Ms. Bowen:

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# 422381.

Weatherford College (the "college"), which you represent, received a request for (1) all records related to meetings or conversations with or regarding the requestor; (2) the names of members of the college's Basketball Booster Club during 2007 and 2008; (3) a list of all records related to the requestor that were destroyed or "moved off campus[;]" (4) all records from a specified meeting, including a specified document; (5) all records provided to or received from members of the college's board of trustees containing instructions or questions about the requestor's non-renewal hearing; and (6) a named individual's work schedule and travel log for the summer of 2010. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted representative sample of information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

[1]Although you also raise section 552.101 of the Government Code of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you have withdrawn this exception. *See* Gov't Code §§ 552.301, .302.

Initially, we note the college did not submit for our review information responsive to items 2, 3, and 6 of the request. Although you state the college submitted a representative sample of information, no portion of the submitted representative sample pertains to these portions of the request. Thus, we find the submitted information is not representative of the information sought in items 2, 3, and 6 of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301 of the Government Code, information at issue is presumed to be public). Because you have not submitted information responsive to items 2, 3, and 6 of the request for our review, we assume the college has released any such information. *See id.* §§ 552.301, .302. If the college has not released such information, it must do so at this time. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We now address your arguments against disclosure of the information represented by 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. 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. *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, 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

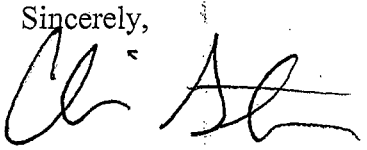
attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state that the communications at issue were made for the purpose of requesting legal advise from the college's attorney and rendering legal advice to the college. You inform us that these communications were intended to be and have remained confidential. You have identified the parties to the communications. Based on your representations and our review, we agree that the submitted information constitutes privileged attorney-client communications. Accordingly, the college may withhold the submitted information under section 552.107(1) of the Government Code.[2]

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/bs

Ref: ID# 422381

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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