



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 28, 2011

Mr. Jim Ewbank  
Ewbank Byrom  
1210 Nueces Street  
Austin, Texas 78701

OR2011-09220

Dear Mr. Ewbank:

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# 421578.

The Daughters of the Republic of Texas (the "DRT"), which you represent, received a request for (1) specified documents delineated in the request; (2) DRT 2009 Form 990; (3) all letters from a named individual to the Office of the Attorney General (the "OAG") regarding the DRT; (4) the DRT Charter and Bylaws 2010; (5) the DRT Manual of Procedure 2010; (6) all proceedings of the DRT Annual Conventions of 2007 and 2009; and (6) certain committee minutes, Alamo engineering reports, and Alamo master plans produced to the OAG. You state you have released some information to the requestor. You claim that some of the requested information is not subject to the Act. Further, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, Texas Rule of Civil Procedure 192.5, and Texas Disciplinary Rule of Professional Conduct 1.05, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Further, although you also raise rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure, we note sections 552.107 and 552.111 of the Government Code are the proper exceptions to raise when asserting the attorney-client and attorney work product privileges for information not subject to section 552.022 of the Government Code. *See* ORD 676 at 1-2, Open Records Decision No. 677 (2002). In addition, while you also raise rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, you have not provided any arguments explaining how this rule is applicable to the submitted information. Therefore, we presume you no longer assert this argument. *See* Gov't Code §§ 552.301, .302.

Initially, we note you have not submitted DRT 8949, DRT 9739-9741, DRT 9752-9761, and DRT 9785-9787 for our review. The requestor states this information has not been released to her. Thus, if this information existed when the DRT received the request, you must release this information to the requestor at this time. *See id.* §§ 552.301(a), .302; *see also* 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).

Next, we note the requestor, in correspondence with this office, has withdrawn her request for some of the information at issue. Accordingly, this information is not responsive to the request. This ruling does not address the public availability of information that is not responsive to the request, and the DRT is not required to release any non-responsive information to the requestor.

Next, the DRT asserts some of the responsive information is not public information and, thus, not subject to the Act. The Act is applicable to "public information," as defined by section 552.002 of the Government Code. Section 552.002(a) provides that "public information" consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). In Open Records Letter No. 88-344 (1988), we specifically stated that the DRT "is subject to the [Act] to the extent that it receives public funds for the management of the Alamo. All information regarding the collection, management, and expenditure of those funds is public." *See also* Gov't Code § 552.003(1)(A)(x) (governmental body includes the part, section, or portion of a corporation that spends or that is supported in whole or in part by public funds). You state the information you have indicated in the responsive documents does not implicate the collection, management, or expenditure of public funds. We note, however, that most of the information at issue pertains to two state properties: the Alamo and the French Legation Museum. In Open Records Letter No. 88-344, we also stated that "[a]ny funds collected, managed, and expended by the DRT on behalf of state property are state funds within the meaning of [the Act.]" Accordingly, we find that most of the information at issue is subject to the Act. We note DRT 9831-9834 and DRT 9891-9893 pertain to the financial records

of the DRT. Nevertheless, we conclude those records are subject to the Act to the extent they pertain to funds collected, managed, and expended by the DRT on behalf of state property. To the extent DRT 9831-9834 and DRT 9891-9893 do not pertain to funds collected, managed, and expended by the DRT on behalf of state property, this information is not subject to the Act and need not be released to the requestor.

The DRT asserts a portion of the responsive information is confidential under section 552.101 of the Government Code in conjunction with section 12.154 of the Business Organizations Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 12.153 of the Business Organizations Code authorizes the OAG to "investigate the organization, conduct, and management of a filing entity . . . and determine if the entity has been or is engaged in acts or conduct in violation of: . . . (2) any law of this state." Bus. Org. Code § 12.153. In order to examine the entity's business, "the attorney general shall make a written request to a managerial official, who shall immediately permit the attorney general to inspect, examine, and make copies of the records of the entity." *Id.* § 12.152. Information the OAG maintains and derives in the course of an examination of the entity's records is confidential. *Id.* § 12.154. In this instance, the information at issue is maintained by the DRT. We therefore conclude the DRT may not withhold any of the responsive information under section 552.101 of the Government Code in conjunction with section 12.154 of the Business and Organizations Code. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Gov't Code § 552.107(1). 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). 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 to only communications between or among clients, client representatives, lawyers, and lawyer representatives. 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 to only 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 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 some of the responsive information consists of communications made for the purpose of providing legal services to the DRT. Although you have not identified all of the parties to the communications, we are able to discern the identities of the privileged parties. You indicate the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find the DRT may withhold DRT 9019-9022, DRT 9316-9350, and DRT 11195 under section 552.107(1) of the Government Code.<sup>2</sup>

The remaining information includes bank account numbers subject to section 552.136 of the Government Code and e-mail addresses subject to section 552.137 of the Government Code.<sup>3</sup> Section 552.136 of the Government Code provides “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the DRT must withhold the bank account numbers we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). We note that this exception is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The e-mail addresses at issue are not specifically excluded by section 552.137(c). Accordingly, the DRT must withhold the e-mail addresses, a

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

<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

representative sample of which we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure.<sup>4</sup>

In summary, the DRT may withhold DRT 9019-9022, DRT 9316-9350, and DRT 11195 under section 552.107(1) of the Government Code. The DRT must withhold the bank account numbers we have marked under section 552.136 of the Government Code. The DRT must also withhold the e-mail addresses, a representative sample of which we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure. The remaining responsive information that is subject to the Act 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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 421578

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>4</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account numbers under section 552.136 of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.