



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2011

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

OR2011-09311

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# 422351 (OGC# 136948).

The University of Texas Health Science Center at Houston (the "center") received a request for four categories of information concerning the requestor and a program at the center for the time period of January 1, 2008 through the date of the request. You claim the information responsive to the first and third categories of the request is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted sample of information.¹

Initially, we note some of the submitted information was created after the request was received. This information, which we have marked, is not responsive to the instant request for information. This decision does not address the public availability of information that is not responsive to the request.

¹We assume the representative sample of records 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 that submitted to this office.

We also note the center asked the requestor for clarification of the second and fourth categories of the request. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request). You indicate the requestor has not responded to this request for clarification; therefore, the center is not required to release any responsive information for which it sought clarification. If the requestor responds to the clarification request, the center must seek a ruling from this office before withholding any responsive information from the requestor. *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Next, we consider your argument to withhold the information responsive to the first and third categories of the request. 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 (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. 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 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).

The submitted information consists of several e-mails including three e-mail chains. You identify the individuals involved in the e-mail communications as center officials and attorneys. You explain these communications were for the purpose of facilitating the rendition of legal services to the center, and the e-mails were intended to be and have remained confidential. Therefore, based on your representations and our review, we agree most of the submitted e-mails are privileged and excepted from disclosure under section 552.107 of the Government Code. However, the marked e-mails reflect they were sent to a non-privileged party. Consequently, to the extent the marked non-privileged e-mails exist separate and apart from the otherwise privileged e-mail strings in which they were submitted, they may not be withheld under section 552.107. However, to the extent the non-privileged e-mails do not exist separate and apart from the strings in which they were submitted, they may be withheld along with the privileged portions of the strings under section 552.107.

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,



Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/sdk

Ref: ID# 422351

Enc. Submitted documents

c: Requestor
(w/o enclosures)