



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2011

Ms. Elisabeth A. Donley  
Law Offices of Robert E. Luna, PC  
4411 North Central Expressway  
Dallas, Texas 75205

OR2011-10026

Dear Ms. Donley:

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# 423781.

The Garland Independent School District (the "district"), which you represent, received a request for information pertaining to a named district employee, including the employee's personnel file, correspondence regarding the employee's administrative leave, specified investigations, any complaints against the employee, and non-renewal of the employee's contract. You state the district will release some of the requested information with social security numbers redacted pursuant to section 552.147 of the Government Code and with certain information redacted pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You further state the district has no information responsive to portions of the request.<sup>2</sup> You claim some of the submitted information is excepted from disclosure under section 552.107 of the

---

<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision.

<sup>2</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Government Code.<sup>3</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>4</sup>

Initially, you state some of the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2010-18256 (2010) and 2010-18338 (2010). In Open Records Letter No. 2010-18256, we determined the district may withhold the submitted information under section 552.107 of the Government Code. In Open Records Letter No. 2010-18338, we determined the district may withhold the submitted information on behalf of the Texas Education Agency under section 552.116 of the Government Code. You state there has been no change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, we conclude the district may rely on Open Records Letter Nos. 2010-18256 and 2010-18338 as previous determinations and withhold the identical information in accordance with those rulings. *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).

Next, you indicate portions of the submitted information, which you have marked, are not responsive to the instant request for information because they do not pertain to the named district employee. This ruling does not address the public availability of any information that is not responsive to the request and the district is not required to release such information in response to this request.

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* ORD 676 at 6-7. 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.

---

<sup>3</sup>Although you also raise rule 503 of the Texas Rules of Evidence, we note section 552.107 of the Government Code is the proper exception to raise when asserting the attorney-client privilege for information in this instance. *See* Open Records Decision No. 676 at 1-2 (2002).

<sup>4</sup>We 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.

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, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* 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 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. *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 claim Exhibit D is protected by section 552.107 of the Government Code. You state the information at issue consists of communications involving the district’s attorneys and representatives of the district. You have identified the parties to the communications. You state the communications were made in furtherance of the rendition of professional legal services to the district. You state these communications have remained confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to Exhibit D. Accordingly, the district may generally withhold Exhibit D under section 552.107(1) of the Government Code. We note you have marked several non-privileged attachments that you indicate exist separate and apart from the otherwise privileged communications. Thus, with the exception of the marked non-privileged attachments, which you indicate will be released to the requestor, the district may withhold Exhibit D 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](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,

A handwritten signature in blue ink that reads "Claire Morris Sloan". The signature is fluid and cursive, with the first name "Claire" being the most prominent.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/em

Ref: ID# 423781

Enc. Submitted documents

c: Requestor  
(w/o enclosures)