



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2011

Mr. Ben Stool
Assistant District Attorney
Civil Division
Dallas County District Attorney's Office
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2011-15640

Dear Mr. Stool:

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# 434100.

The Dallas County Commissioners Court (the "county") received a request for information pertaining to 2011 redistricting activities, including maps, public comments, certain information regarding communications from attorneys representing the county, and e-mails between members of the commissioners court. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's and your assertions that the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2011-08440 (2011) and 2011-12140 (2011). Open Records Letter No. 2011-08440 concerned a request for all information related to 2012 redistricting,

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.

including records on the involvement of each member of the commissioners court. You released some information in response to that request, and in our ruling, we held the county may withhold some of the information at issue under section 552.111 of the Government Code, must withhold an e-mail address under section 552.137 of the Government Code, and must release the remaining information at issue in that request. Open Records Letter No. 2011-12140 concerned a request for information pertaining to redistricting from a specified time period. You released some information in response to that request, and in our ruling, we held the county may withhold the information at issue in that request under section 552.107 of the Government Code. There is no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, we conclude the county must continue to rely on Open Records Letter Nos. 2011-08440 and 2011-12140 as previous determinations and withhold or release the previously ruled upon information in accordance with the prior 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 information is or is not excepted from disclosure); *see also* Gov't Code § 552.007 (prohibiting selective disclosure of information). To the extent the information at issue in the present request was not responsive to the previous requests for information and is not encompassed by those rulings, we will consider your arguments against disclosure.

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 Texas 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 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. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). 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 assert the submitted information consists of communications between county employees and officials, county attorneys, outside counsel for the county, and consultants hired by the county’s outside counsel. You also assert these communications were made in confidence and their confidentiality has been maintained. You have identified the parties to the communications. Based on these representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, to the extent the information at issue was not responsive to the previous requests for information in Open Records Letter Nos. 2011-08440 and 2011-12140 and is not encompassed by those rulings, the county may withhold the submitted information under section 552.107 of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 434100

Enc. Submitted documents

c: Requestor
(w/o enclosures)