



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2012

Mr. Daniel Bradford
Assistant County Attorney
Travis County Attorney's Office
P.O. Box 1748
Austin, Texas 78767

OR2012-01889

Dear Mr. Bradford:

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# 448568.

The Travis County Attorney's Office (the "county attorney") received a request for information involving the requestor, seven named individuals, and a specified time period. We understand some of the requested information either has been or will be released. You claim other responsive information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.¹

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege.² 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* 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

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the county attorney to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²Although you also claim the attorney-client privilege under section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, we note section 552.101 does not encompass discovery privileges. *See* Open Records Decision No. 676 at 1-3 (2002).

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. 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, and lawyer representatives. *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, orig. proceeding). 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).

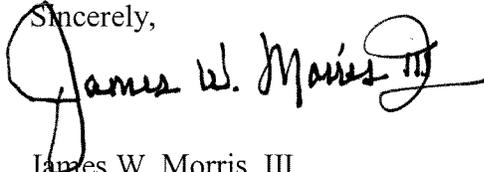
You explain the information at issue consists of or documents communications between or among attorneys or attorney representatives of the county attorney’s office and client representatives of the Travis County Human Resources Department and the Travis County Sheriff’s Office. You state the communications were made for the purpose of facilitating the rendition of professional legal services. You also state the communications were intended to be and remain confidential. Based on your representations and our review, we conclude the county attorney may generally withhold the information at issue under section 552.107(1) of the Government Code. We note, however, that the e-mail string at issue includes a communication with a non-privileged party. To the extent that communication, which we have marked, exists separate and apart from the e-mail string, it may not be withheld under section 552.107(1) and must be released.³

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.

³We note the marked communication includes the requestor’s e-mail address, which is generally confidential under section 552.137(a) of the Government Code. The requestor has a right of access, however, to his own e-mail address under section 552.137(b).

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 448568

Enc: Submitted documents

c: Requestor
(w/o enclosures)