



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 22, 2012

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2012-04251

Dear Ms. Soucy:

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# 449093 (Comptroller ID# 7905503756).

The Office of the Texas Comptroller of Public Accounts (the “comptroller’s office”) received a request for all internal and external written or electronic communications, correspondence, memoranda or notes, and any other documents related to Attorney General opinion request RQ-1019-GA. You state you have released some information to the requestor. You claim the remaining information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* 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. *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

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (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, 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).

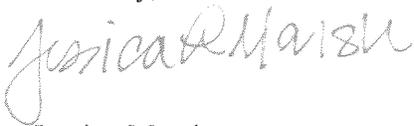
You explain the submitted records are communications between identified attorneys and employees of the comptroller’s office made to facilitate the rendition of professional legal services. You inform us the communications were intended to be, and have remained, confidential. Based on your representations and our review, we conclude you have established the communications are protected by the attorney-client privilege. We note, however, one e-mail within an otherwise privileged e-mail string is a communication with a non-privileged party. To the extent this non-privileged e-mail, which we have marked, exists separate and apart from the submitted e-mail string to which it is attached, we conclude this e-mail may not be withheld under section 552.107(1) of the Government Code. If this e-mail does not exist separate and apart from the privileged e-mail string, the comptroller’s office may withhold it as a privileged attorney-client communication under section 552.107(1) of the Government Code. Further, the submitted information includes attachments created by or submitted to non-privileged parties that exist separate and apart from the communications to which they are attached. These attachments are separately responsive to the request. Thus, if the comptroller’s office has not already done so, you must release the attachments at this time. The comptroller’s office may withhold the remaining information 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, 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 cursive script that reads "Jessica Marsh".

Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 449093

Enc. Submitted documents

c: Requestor
(w/o enclosures)