



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2012

Ms. Michelle Hunter  
Executive Director  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711

OR2012-06105

Dear Ms. Hunter:

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# 451925.

The State Bar of Texas (the "State Bar") received a request for all documents sent to or from any State Bar officer, director, or employee that refers to changes, or proposed changes, regarding specified rules during a specified period of time.<sup>1</sup> You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>You state the State Bar sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

<sup>2</sup>Although you raise section 552.101 of the Government Code, you have not submitted arguments in support of that exception; therefore, we assume you have withdrawn it. See Gov't Code §§ 552.301, .302. Further, although you also raise Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, we note, in this instance, the proper exceptions to raise when asserting the attorney-client privilege or work product privilege for information not subject to section 552.022 of the Government Code are sections 552.107 and 552.111, respectively. See Open Records Decision Nos. 676 at 1-2 (2002), 677 (2002).

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. 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. 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. 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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *See* 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, 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 state the submitted information consists of confidential communications between State Bar legal counsel, State Bar officers, board members, the Executive Director, and select staff members. You state these communications were made in the further of the rendition of legal services to the State Bar and were not intended to be disclosed to third parties. Further, you inform this office these communications have remained confidential. Based on your representations and our review, we agree the submitted information constitutes privileged attorney-client communications. Accordingly, the State Bar may withhold the submitted information under section 552.107(1) 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](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, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/em

Ref: ID# 451925

Enc. Submitted documents

c: Requestor  
(w/o enclosures)