



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2012

Ms. Katie Anderson  
Strasburger  
901 Main Street, Suite 4400  
Dallas, Texas 75202-3794

OR2012-08534

Dear Ms. Anderson:

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# 459561.

The Cedar Hill Independent School District (the "district"), which you represent, received a request for information pertaining to two internal investigations. You state the district has released some of the responsive information. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim the submitted information is excepted by section 552.107 of the Government Code, which protects information coming 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 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 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 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. 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, *id.*, 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 represent the submitted e-mails were communicated between employees and legal counsel for the district. You also state these e-mails were communicated for the purpose of providing professional legal services to the district. You also state the communications were intended to be and have remained confidential. Thus, based on your representations and our review, we agree the district may generally withhold the information at issue under section 552.107(1) of the Government Code. However, we note some of the submitted e-mail strings include communications with a non-privileged party. If the communications with this non-privileged party, which we have marked, exist separate and apart from the e-mail strings in which they appear, then they may not be withheld under section 552.107.

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 cursive script that reads "Tamara H. Holland".

Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/ag

Ref: ID# 459561

Enc. Submitted documents

c: Requestor  
(w/o enclosures)