



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2012

Mr. Andrew B. Thompson
Assistant General Counsel
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110

OR2012-10522

Dear Mr. Thompson:

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# 459977.

The Corpus Christi Independent School District (the "district") received a request for (1) information related to "the denial of assault leave benefits" of a named district employee; (2) a list of witnesses that were interviewed by the district; and (3) "all notes of public meetings or private meetings, e-mails, and record of phone calls by any and all administrative staff members concerning the denial of assault leave benefits, or any and all complaints, against [the named district employee]." You state the district released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

¹Although you also raise section 552.101 of the Government Code in conjunction with Texas Disciplinary Rule of Professional Conduct 1.05 and Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Thus, we will not address your claims under section 552.101 in conjunction with rules 1.05 and 503. We note section 552.107 is the proper exception to raise when asserting the attorney-client privilege for information not subject to required disclosure under section 552.022 of the Government Code. See ORD 676 at 1-2, Open Records Decision No. 677 (2002).

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 communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. *Id.* 503(b)(1). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *Id.* 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 state the information in Exhibit B consists of communications between district officials and the district's Office of Legal Services. You state these communications were made to facilitate the rendition of professional legal services to the district. You inform us the confidentiality of the communications has not been waived. Based on your representations and our review, we conclude you have established the communications are protected by the attorney-client privilege. Accordingly, the district may withhold Exhibit B under section 552.107(1) of the Government Code.²

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,

²As our ruling is dispositive for this information, we do not address your remaining argument against its disclosure.

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 "Sean Opperman". The signature is written in a cursive style with a horizontal line at the end.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 459977

Enc. Submitted documents

c: Requestor
(w/o enclosures)