



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2012

Ms. Heather R. Rutland
Henslee Schwartz, L.L.P.
816 Congress Avenue, Suite 800
Austin, Texas 78701-2443

OR2012-19855

Dear Ms. Rutland:

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# 473209.

The Lockhart Independent School District (the "district"), which you represent, received two requests from the same requestor for documents forwarded to a specified recipient on specified topics, a specific legal opinion, the final version of a specified portion of a ballot, and specified "board briefings" and related documents. You state you have released some information to the requestor. You claim that 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested third party may submit comments to this office stating why the information at issue should or should not be released).

Initially, we will address the requestor's assertion that the district did not comply with the procedural obligations of section 552.301 of the Government Code. Pursuant to section 552.301(b) of the Government Code, a governmental body must request a ruling from this office and state the exceptions that apply within ten-business-days after receiving the request for information. *See id.* § 552.301(b). The requestor states she first requested information from the district on September 6, 2012 and that the district did not pro-actively clarify her request. The submitted information shows the district responded to the September 6, 2012 request and informed the requestor there was no responsive information.

We note this office must rely on a governmental body to make a good-faith effort to determine what information is responsive to a request. *See* Open Records Decision No. 590 (1991). Accordingly, based on the representation from the district and information provided to this office, we conclude the district timely responded to the prior request and the October 3, 2012 request is a new and separate request for information. Accordingly, the district's ten-business-day deadline to request a ruling from this office in response to the October 3, 2012 request was October 17, 2012. The envelope in which the district sent its request for a ruling to this office was postmarked October 4, 2012. *See* Gov't Code § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the district complied with section 552.301(b) of the Government Code in requesting a ruling from this office.

Section 552.107(1) of the Government Code 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. 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. 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 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 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 to only 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 to only 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

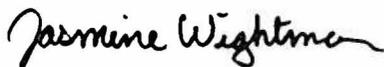
S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information you have marked consists of or documents communications between district attorneys and district representatives acting in their capacity as clients. You state these communications were made for the purpose of providing legal services to the district. You state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find the information you have marked consists of or documents privileged attorney-client communications, and therefore, the district may withhold the marked 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,



Jasmine D. Wightman
Assistant Attorney General
Open Records Division

JDW/tch

Ref: ID# 473209

Enc. Submitted documents

c: Requestor
(w/o enclosures)