



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 20, 2013

Ms. Hadassah Schloss  
Open Records Coordinator  
Legal Services Division  
Texas General Land Office  
P.O. Box 12873  
Austin, Texas 78711-2873

OR2013-08367

Dear Ms. Schloss:

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# 487793.

The General Land Office (the "GLO") received fourteen requests from the same requestor for information pertaining to the GLO's request for proposals for the United States Department of Housing and Urban Development's Community Development Block Grant Recovery Program - Round 2.2 for the Counties of Chambers, Galveston, Hardin, Jefferson, Kenedy, and Liberty; the Cities of Beaumont, Kountze, Pinehurst, Port Arthur, Rose City, and Sour Lake; Lamar University; and the Southeast Texas Regional Planning Commission. You state the GLO does not maintain information responsive to portions of the requests for information.<sup>1</sup> You further state the GLO is releasing some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. Additionally, you state release of some of the submitted information may implicate the proprietary interests of CDM Smith ("CDM"); Carl R. Griffith & Associates, Inc. ("Griffith"); David J. Waxman, Inc. ("Waxman"); Gary R. Traylor & Associate, Inc. ("Traylor"); GrantWorks, Inc. ("GrantWorks"); Public Management, Inc. ("Public"); Raymond K. Vann & Associate, L.L.C. ("Vann"); Science Applications International Corporation ("SAIC"); and URS Corporation ("URS"). Accordingly, you state, and provide documentation showing, you

---

<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

notified CDM, Griffith, Waxman, Traylor, GrantWorks, Public, Vann, SAIC, and URS of the requests for information and of the right of each to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from a representative of Vann, who states Vann does not object to release of its information. We have reviewed the submitted information and considered the submitted arguments.

Initially, you state a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-06035 (2013). In that ruling, we held the GLO (1) may generally withhold a portion of the information at issue under section 552.107(1) of the Government Code, but if the marked non-privileged e-mail is maintained by the GLO separate and apart from the otherwise privileged e-mail string in which it appears, then the GLO may not withhold it under section 552.107(1) of the Government Code; (2) may withhold a portion of the remaining information at issue under section 552.111 of the Government Code; and (3) must release the remaining information. As we have no indication the law, facts, or circumstances upon which the prior ruling was based have changed, the GLO may continue to rely on Open Records Letter No. 2013-06035 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as the law, facts, and circumstances upon which prior ruling is based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address the submitted arguments for the information not subject to Open Records Letter No. 2013-06035.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. 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 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. *See* 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. *See 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 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, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *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, *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. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain 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 submitted as Attachment B consists of communications involving attorneys for the GLO and GLO employees in their capacities as clients. You state these communications were made in furtherance of the rendition of professional legal services to the GLO. You state these communications were confidential, and you state their confidentiality has been maintained. Based on your representations and our review, we find the information in Attachment B consists of privileged attorney-client communications the GLO may withhold under section 552.107(1) of the Government Code.<sup>2</sup>

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from CDM, Griffith, Waxman, Traylor, GrantWorks, Public, SAIC, or URS explaining why any of the remaining information should not be released. Therefore, we have no basis to conclude either CDM, Griffith, Waxman, Traylor, GrantWorks, Public, SAIC, or URS has a protected proprietary interest in the remaining information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the GLO may not withhold the remaining information on the basis of any proprietary interest CDM, Griffith, Waxman, Traylor, GrantWorks, Public, SAIC, or URS may have in the information.

---

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

In summary, the GLO may continue to rely on Open Records Letter No. 2013-06035 as a previous determination and withhold or release the information at issue in accordance with that ruling. The GLO may withhold Attachment B under section 552.107(1) of the Government Code. As no further exceptions to disclosure have been raised, the remaining information must be released.

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,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 487793

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Carl R. Griffith  
Carl R. Griffith & Associates, Inc.  
2901 Turtle Creek Drive, Suite 445  
Port Arthur, Texas 77642  
(w/o enclosures)

Mr. Gary R. Traylor  
Gary R. Traylor & Associates, Inc.  
201 Cambridge Road  
Tyler, Texas 75711  
(w/o enclosures)

Mr. J. Andrew Rice  
Public Management, Inc.  
P.O. Box 1827  
Cleveland, Texas 77328  
(w/o enclosures)

Ms. Betty Kamara  
Science Applications International Corporation  
3200 Southwest Freeway, Suite 3300  
Houston, Texas 77027  
(w/o enclosures)

Mr. David J. Waxman  
David J. Waxman, Inc.  
P.O. Box 900  
Jasper, Texas 75951  
(w/o enclosures)

Mr. Bruce J. Spitzengel  
GrantWorks, Inc.  
2201 Northland Drive  
Austin, Texas 78756  
(w/o enclosures)

Mr. Chris Canonico  
CDM Smith  
3050 Post Oak Boulevard, Suite 300  
Houston, Texas 77056  
(w/o enclosures)

Mr. Dan Warth  
URS Corporation  
9400 Amberglen Boulevard  
Austin, Texas 78729  
(w/o enclosures)

Mr. Raymond K. Vann, Jr.  
President  
Raymond K. Vann & Associates, L.L.C.  
402 East Shepherd Avenue  
Lufkin, Texas 75901  
(w/o enclosures)