



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2013

Mr. Charles Galindo Jr.
Assistant Attorney General
Assistant Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2013-12171

Dear Mr. Galindo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 493729 (PIR No. 13-36135).

The Office of the Attorney General (the "OAG") received a request for 1) the resume, background information, and references for a named person and 2) the Texas Uniform Crime reports sent to the Federal Bureau of Investigations. The OAG states it has no information responsive to request item 2, has released some information, and asserts the remainder is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, and 552.134 of the Government Code. We have considered the OAG's claimed exceptions to disclosure and have reviewed the submitted sample of information.¹

Section 552.107(1) of the Government Code protects information coming 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

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 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)(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, orig. proceeding). 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).

The OAG states the Texas Department of Criminal Justice (the “department”) transmitted the documents in Exhibit B to its attorney in the OAG’s Law Enforcement Defense Division for legal representation. Furthermore, the OAG states the communicated documents were intended to be confidential, and the confidentiality of the transmission has been maintained. Because the transmission was made in furtherance of the OAG’s rendition of legal services to its client, we find the OAG may withhold Exhibit B under section 552.107 of the Government Code.²

Next, the OAG asserts section 552.134 of the Government Code excepts from disclosure the information it marked in Exhibit C. Section 552.134 provides in relevant part:

²Because section 552.107 is dispositive, we do not address the OAG’s other assertions.

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). We have previously held the department has the discretion to transfer to another governmental body information subject to the statutory predecessor to section 552.134, and the transferred information remains confidential in the hands of the receiving governmental body. *See* Open Records Decision No. 667 (2000) (department has discretion to release inmate's social security number made confidential by statutory predecessor to section 552.134 to voter registrar for purpose of maintaining accurate voter registration lists, and transferred social security number remains confidential in possession of voter registrar). The information at issue consists of records the department maintains regarding an inmate, copies of which were provided to the OAG as the department's counsel. Thus, the OAG must withhold the information about an inmate it marked in Exhibit C pursuant to section 552.134.

In summary, the OAG may withhold Exhibit B pursuant to section 552.107 of the Government Code and the inmate information it marked in Exhibit C pursuant to section 552.134 of the Government Code. The OAG must release the remainder of Exhibit C.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 493729

Enc: Submitted documents

c: Requestor
(w/o enclosures)