



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 19, 2013

Mr. Richard Vance  
Karczewski Bradshaw, L.L.P.  
315 North Church Street  
Nacogdoches, Texas 75961

OR2013-14439

Dear Mr. Vance:

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# 499438 (RISD Request ID# 22353).

The Royal Independent School District (the "district"), which you represent, received a request for six categories of information pertaining to the employment of the requestor's client with the district, including communications regarding a specific position for specified periods of time. You state the district is producing some of the requested information but claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.<sup>1</sup> We have considered the claimed exception and reviewed the submitted information.

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 in order to withhold the information at issue. ORD 676 at 6-7. 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

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with Texas Disciplinary Rule of Professional Conduct 1.05, Texas Rule of Evidence 503, Texas Rule of Civil Procedure 192.5, and the "common law attorney-client privilege and work product doctrine," this office has concluded section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 677 (2002), 676 (2002).

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 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, 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 explain the submitted information constitutes confidential communications between an attorney for and employees of the district that were made in furtherance of the rendition of professional legal services to the district. You also assert the communications were intended to be confidential and their confidentiality has been maintained. After reviewing your arguments and the submitted information, we find you have demonstrated the applicability of the attorney-client privilege to the submitted information. Therefore, the district may withhold the submitted information from release 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.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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 499438

Enc. Submitted documents

c: Requestor  
(w/o enclosures)