



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2013

Mr. James R. Evans, Jr.
Hargrove & Evans, LLP
4425 MoPac South, Building 3, Suite 400
Austin, Texas 78735

OR2013-18912

Dear Mr. Evans:

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# 503966.

The Navarro Central Appraisal District (the "district"), which you represent, received a request for (1) any records that refer to or mention the requestor, and (2) certain categories of information pertaining to property appraisals. You state you have made some of the responsive information available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.110, and 552.149 of the Government Code.¹ Additionally, you state the proprietary interests of MetroTex Association of Realtors, Inc. ("MetroTex") might be implicated. Accordingly, you notified MetroTex of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received

¹Although you raise section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision No. 676 at 1-2 (2002). Further, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code, as in this case, is section 552.107. *See id.*

arguments from MetroTex. Thus, we have considered the arguments and reviewed the submitted information, a portion of which consists of representative samples of information.²

Section 552.107(1) of the Government Code protects information that comes 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. 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 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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *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, 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).

You state Exhibit D consists of confidential communications between district staff and counsel for the district. You state these communications were made in the furtherance of the rendition of legal services to the district and were not intended to be disclosed to third parties. In addition, you inform this office these communications have remained confidential. Based on your representations and our review, we agree most of Exhibit D constitutes privileged attorney-client communications. However, we note one of the privileged communications includes an attachment from the requestor, a non-privileged

²We assume the “representative samples” of records submitted to this office are 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 those submitted to this office.

party. Further, the attachment is separately responsive to the instant request. Accordingly, with the exception of this non-privileged attachment, which we have marked, the district may withhold Exhibit D under section 552.107.

MetroTex raises section 552.110(b) of the Government Code for the multiple listing service information at issue in Exhibit E. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999). MetroTex informs us the information at issue was furnished to the district as part of its membership with the company. MetroTex also states this information is for the exclusive use of its due-paying members and is not available to the general public. Thus, MetroTex argues release of the information at issue would cause the company substantial competitive harm by making a fundamental benefit of membership available to the public. Upon review, we find the information at issue in Exhibit E must be withheld under section 552.110(b) of the Government Code.³

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 22.27 of the Tax Code, which provides in pertinent part:

(a) Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the comptroller about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

Tax Code § 22.27(a). You state Exhibit F consists of applications for valuations of properties not owned by the requestor. You state the information at issue was furnished to

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

the district by the owners of the properties at issue in connection with the appraisal of the properties as open-space land. You state the information at issue "might not have been obtained under any promise of confidentiality[.]" You argue, however, the language of section 22.27(a) is written such that the requirement of a promise of confidentiality applies only to information voluntarily disclosed about sales prices. You therefore argue, although the information at issue may not have been disclosed under a promise of confidentiality, the information is nonetheless confidential under section 22.27(a) because it is information submitted by the property owners in connection with the appraisal of property, and does not consist of voluntarily disclosed sales price information. After considering your arguments and reviewing the statutory language, we agree the promise of confidentiality requirement in section 22.27(a) pertains only to voluntarily disclosed sales price information. Accordingly, based on your arguments and our review of the information at issue, we find Exhibit F is confidential under section 22.27(a) of the Tax Code, and must be withheld under section 552.101 of the Government Code.

In summary, with the exception of the non-privileged attachment we have marked, the district may withhold Exhibit D under section 552.107 of the Government Code. The district must withhold the information at issue in Exhibit E under section 552.110(b) of the Government Code. The district must withhold Exhibit F under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. 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.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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 503966

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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