



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 5, 2013

Ms. Ashley D. Fourt  
Assistant District Attorney  
Tarrant County District Attorney's Office  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2013-19278

Dear Ms. Fourt:

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# 504827.

The Tarrant County District Attorney's Office (the "district attorney's office") received a request for all written correspondence and phone records involving a named county employee and several named individuals, or written correspondence from the named employee referring to specified topics, all from January 1, 2011 to the date of the request. You state the district attorney's office does not have information responsive to most of the request.<sup>1</sup> You state some information will be made available to the requestor. You claim a portion of the submitted information, which you have marked as Exhibit B, is excepted from disclosure under section 552.107 of the Government Code. You state the district attorney's office takes no position with respect to the public availability of the remaining submitted information, which you have marked as Exhibit E. However, you state release of this information may implicate the interests of the named county employee and a third party. Accordingly, you state, and provide documentation showing, you notified these individuals of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information). We have received comments from a representative of the named county employee (the "county employee"). We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Initially, the county employee claims Exhibit E is not responsive to the request for information. Exhibit E consists of e-mails and attached documents sent between the named county employee and individuals not named in the request. There is no indication these communications were forwarded to any of the other individuals named in the request, and they do not pertain to the topics specified in the request. Thus, we agree with the county employee that Exhibit E is not responsive to this request. This decision does not address the public availability of the non-responsive information, and the information in Exhibit E need not be released.<sup>2</sup>

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *Id.* § 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 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. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). 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).

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<sup>2</sup>As our ruling is dispositive for this information, we need not address the county employee’s remaining arguments against its disclosure.

You state Exhibit B consists of communications sent to and from an attorney for Tarrant County, and indicate the communicants were all privileged parties. We understand the communications were made for the purpose of facilitating the rendition of legal services and were intended to be, and have remained, confidential. Based on your representation and our review, we find you have demonstrated the applicability of the attorney-client privilege to Exhibit B under section 552.107(1). Thus, the district attorney's office may withhold Exhibit B 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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tch

Ref: ID# 504827

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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