



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2014

Ms. Andrea Slater Gulley
For the Amarillo I.S.D.
Underwood Law Firm, P.C.
P.O. Box 9158
Amarillo, Texas 79105-9158

OR2014-02155

Dear Ms. Gulley:

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# 513305.

The Amarillo Independent School District (the "district"), which you represent, received a request for information and internal communications related to the Amarillo Recreation Complex and public records requests for a specified time period.¹ The district states it has released some information to the requestor. The district claims the submitted information is excepted from disclosure under sections 552.104, 552.107, 552.111, and 552.137 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor.

¹The district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

²Although you raise section 552.021 of the Government Code, we note that this provision is not an exception to disclosure under the Act. *See* Gov't Code § 552.021 (providing that public information is available during normal business hours). In addition, although you also raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, the requestor claims the district failed to comply with the procedural requirements of the Act in requesting a ruling from this office. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e-1), a governmental body that submits written comments to the attorney general under section 552.301(e)(1)(A) must, within fifteen business days of receiving the request for information, send a copy of those comments to the person who requested the information from the governmental body. *See id.* § 552.301(e-1). The requestor claims the district failed to provide him with a complete copy of its written comments stating the reasons why the stated exceptions apply that would permit the requested information to be withheld. Further, the requestor asserts the district redacted substantial portions of its arguments and does not provide sufficient information. Upon review of the district's brief, we find it complied with section 552.301(e-1) of the Government Code in requesting this ruling.

Next, you state some of the submitted information, which you have marked, is not responsive to the present request. Upon review, we agree the information you marked is not responsive to the instant request because it does not consist of internal communications related to the Amarillo Recreational Complex. This ruling does not address public availability of any information that is not responsive to the request and the district is not required to release such information in response to this request.

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 to only 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 to only 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 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 the submitted information consists of communications between district employees and officials and an attorney for the district that were made expressly for the purpose of facilitating the rendition of professional legal services to the district. You also state the communications were intended to be confidential and that confidentiality has been maintained. Based on your representations and our review, we find the district may withhold the submitted responsive information under section 552.107(1) of the Government Code.³

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,



Tamara R. Strain
Assistant Attorney General
Open Records Division

TRS/akg

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

Ref: ID# 513305

Enc. Submitted documents

c: Requestor
(w/o enclosures)