



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 23, 2014

Mr. Tillman S. Roots  
Assistant District Attorney  
Comal County Criminal District Attorney's Office  
150 North Seguin Avenue, Suite 307  
New Braunfels, Texas 78130-5161

OR2014-08912

Dear Mr. Roots:

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# 523682 (Comal County File No. 14-OR-033).

The Comal County District Attorney's Office (the "district attorney's office") received a request for a document concerning the maintenance of roads at a specified intersection. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* 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. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information at issue constitutes or documents a communication. *Id.* at 7. Second, the governmental body must demonstrate the communication was made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. *See* 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. See *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 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 the communication has been maintained. Section 552.107(1) generally excepts an entire communication that a governmental body has demonstrated as being 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) (attorney-client privilege extends to entire communication, including facts contained therein).

You claim the submitted information is subject to section 552.107(1) of the Government Code. You state this information consists of a communication between the district attorney’s office and the Comal County Commissioners Court (the “commissioners court”). You state the district attorney’s office made the communication for the purpose of providing legal services to the commissioners court, in its capacity as a client. You inform us the communication was intended to be confidential and has remained confidential. Based on these representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the submitted information. Therefore, the district attorney’s office may withhold the submitted information 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,

A handwritten signature in black ink, appearing to read "Miriam A. Khalifa". The signature is fluid and cursive, with a horizontal line extending to the right.

Miriam A. Khalifa  
Assistant Attorney General  
Open Records Division

MAK/akg

Ref: ID# 523682

Enc. Submitted documents

c: Requestor  
(w/o enclosures)