



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2014

Ms. Ana Vieira
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-12506

Dear Ms. Vieira:

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# 529694 (UT System OGC# 155895).

The University of Texas at Austin (the “university”) received a request for e-mails involving a named individual and pertaining to a specified topic for a specified period of time. You state the university will release some information to the requestor. 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 protected under section 552.107(1) of the Government Code. You state this information consists of communications between attorneys for the university and university employees and representatives in their capacity as clients that were made for the purpose of providing legal services to the university. You further state these communications were intended to be confidential and have 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. Thus, the university may generally withhold the submitted information under section 552.107 of the Government Code. We note, however, and you acknowledge, some of the privileged e-mail strings include e-mails received from a non-privileged party. If these e-mails are removed from the e-mail strings and stand alone, they are responsive to the request for information. Therefore, if the non-privileged e-mails you have marked are maintained by the university separate and apart from the otherwise privileged e-mail strings in which they appear, then the university may not withhold these non-privileged e-mails under section 552.107(1) of the Government Code.

In summary, the university may generally withhold the submitted information under section 552.107(1) of the Government Code. However, if the non-privileged e-mails, which you have marked, are maintained by the university separate and apart from the otherwise privileged e-mail strings in which they appear, then the university may not withhold the non-privileged e-mails under section 552.107(1) of the Government Code, and the university must release the non-privileged e-mails to the requestor.

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,



Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/tch

Ref: ID# 529694

Enc. Submitted documents

c: Requestor
(w/o enclosures)