



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 15, 2014

Mr. R. Brooks Moore  
Managing Counsel, Governance  
The Texas A&M University System  
301 Tarrow Street, Sixth Floor  
College Station, Texas 77840-7896

OR2014-14374

Dear Mr. Moore:

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# 533028 (TAMU 14-378).

Texas A&M University (the "university") received a request for all records from April 20, 2014 until the date of the request documenting the efforts of the Open Records Office of the university to locate and obtain records responsive to the requestor's earlier records request. You state you are providing the requestor with the majority of the requested information. 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 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, 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 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). 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 contend the submitted e-mails between university attorneys and university administrators constitute confidential communications made expressly for the purpose of facilitating the rendition of legal services. You also state these communications were intended to be confidential and that the confidentiality has been maintained. Upon review, we find the university has demonstrated the applicability of the attorney-client privilege to the submitted information. Thus, the university may generally withhold the submitted e-mails under section 552.107(1) of the Government Code. We note, however, some of the e-mail strings include e-mails received from and sent to a non-privileged party. Furthermore, if the e-mails received from or sent to the non-privileged party are removed from the e-mail strings and stand alone, they are responsive to the request for information. Therefore, if these non-privileged e-mails are maintained by the university separate and apart from the otherwise privileged e-mail string in which they appear, then the university may not withhold these non-privileged e-mails under section 552.107(1) of the Government Code.

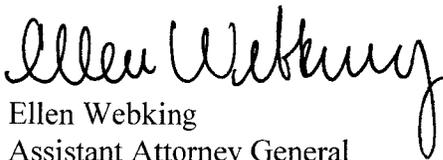
In summary, the university may generally withhold the submitted e-mails under section 552.107(1) of the Government Code. However, to the extent the e-mails we have marked are maintained separate and apart from the privileged e-mail strings in which they

appear, they may not be withheld under section 552.107(1) of the Government Code, and must be released to the requestor.<sup>1</sup>

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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/ds

Ref: ID# 533028

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note that the information being released contains the requestor's e-mail address, to which he has a right of access. See Gov't Code § 552.137(b); Open Records Decision No. 481 at 7 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, if the university receives another request for this information, the university must again seek a decision from this office.