



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 20, 2014

Ms. Elizabeth Lutton  
Legal Advisor  
Dallas County Sheriff's Department  
133 North Riverfront Boulevard, LB-31  
Dallas, Texas 75207-4313

OR2014-14672

Dear Ms. Lutton:

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# 533365.

The Dallas County Sheriff's Office (the "sheriff's office") received a request for (1) all e-mails sent to named individuals from the sheriff's office's staff members regarding a specific crash at a specific time and location, (2) any e-mails to or from named individuals during a specified time period regarding specified open records requests, and (3) any e-mails in the e-mail accounts of named individuals during a specified time period that use any of eight specified terms. You claim the submitted information is excepted from disclosure

under section 552.107 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

We note you have submitted information that falls outside the scope of the categories of information requested. Therefore, this information, which we marked, is not responsive to the present request. The sheriff's office need not release non-responsive information in response to the request, and this ruling will not address that information.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. 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)(A), (E). 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.* 503(b)(1), 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).

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). The proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code. See Open Records Decision Nos. 677 (2002), 676.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 responsive information consists of e-mail communications between the legal advisor, her secretary, and management officials who have the authority to obtain professional legal services or to act on advice rendered by the legal advisor. You assert the communications were intended to remain confidential. Based on your representations and our review, we conclude the responsive information is subject to the attorney-client privilege and may generally be withheld under section 552.107(1) of the Government Code. However, we note one of the e-mail strings includes an e-mail received from a non-privileged party. Furthermore, if the e-mail received from the non-privileged party is removed from the e-mail string and stands alone, it is responsive to the request for information. Therefore, if the non-privileged e-mail, which we marked, is maintained by the sheriff's office separate and apart from the otherwise privileged e-mail string in which it appears, then the sheriff's office may not withhold this non-privileged e-mail under section 552.107(1) of the Government Code.

Next, we address section 552.137 of the Government Code to the extent the marked e-mail exists separate and apart from the otherwise privileged e-mail string. Section 552.137 provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c).<sup>3</sup> Gov't Code § 552.137(a)–(c). Accordingly, to the extent the marked e-mail exists separate and apart from the otherwise privileged e-mail string in which it appears, the sheriff's office must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the sheriff's office may generally withhold the submitted information under section 552.107(1) of the Government Code. However, if the e-mail we marked is maintained by the sheriff's office separate and apart from the otherwise privileged e-mail string in which it appears, then the sheriff's office may not withhold the marked non-privileged e-mail under section 552.107. To the extent the marked e-mail is maintained by the sheriff's office separate and apart from the otherwise privileged e-mail string in which it appears, the sheriff's office must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner consents to its release.

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/dls

Ref: ID# 533365

Enc. Submitted documents

c: Requestor  
(w/o enclosures)