



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2014

Ms. Laura Russell  
Attorney  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744

OR2014-16894

Dear Ms. Russell:

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# 536998 (TPWD ID# 2014-06-R55).

The Texas Parks and Wildlife Department (the "department") received a request for information pertaining to specified pollution events for a specified time period.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>You note the department received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 12.103 of the Parks and Wildlife Code, which provides, in part:

(a) To enforce the game and fish laws of the state and to conduct scientific investigations and research regarding wild game or fish, an authorized employee of the department may enter on any land or water where wild game or fish are known to range or stray.[]

(b) Except as provided by Subsection (d), the department may use information collected by an employee of the department on privately owned land only for the purposes of scientific investigations and research described in Subsection (a) and only if authorized in writing by the landowner or the landowner’s agent.[]

...

(c) Except as provided by Subsection (d), information collected under this section may only be reported or compiled in a manner that prevents the identification of an individual parcel or specific parcels of private property without the written consent of the landowner or the landowner’s agent.

Parks & Wild. Code § 12.103(a)-(c). You state that the information in Exhibit B was collected during the course of a scientific investigation by the department on privately-owned land, for which the department obtained permission from the private landowners to conduct. Based on your representations and our review, we find the information at issue falls within the scope of section 12.103. Because section 12.103(b) prohibits the department from making use of such information for any purpose other than those listed in the statute, we conclude the information in Exhibit B is confidential under section 12.103. You inform us there has been no landowner authorization to disclose this information. Thus, none of the release provisions in section 12.103 appear to be applicable in this instance. Therefore, the department must withhold the information in Exhibit B under section 552.101 of the Government Code in conjunction with section 12.103 of the Parks and Wildlife Code.<sup>3</sup>

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. 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

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 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 information you have marked in Exhibit C constitutes communications between a department attorney and department employees that were made for the purpose of facilitating the rendition of professional legal services to the department. You also state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find the department may withhold the information you have marked in Exhibit C under section 552.107(1) of the Government Code.

In summary, the department must withhold the information in Exhibit B under section 552.101 of the Government Code in conjunction with section 12.103 of the Parks and Wildlife Code. The department may withhold the information you have marked in Exhibit C under section 552.107(1) of the Government Code. The remaining information must be released.

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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/dls

Ref: ID# 536998

Enc. Submitted documents

c: Requestor  
(w/o enclosures)