



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

July 28, 2023

Justin Gordon
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Public Information Request No. R018507

Dear Mr. Gordon:

On July 20, 2023, the Office of the Attorney General ("OAG") received a written request for information from Mr. Stuart Martin.¹ A copy of his request is attached as Exhibit A. In accordance with section 552.308 of the Government Code, this brief was timely placed in intra-agency mail on July 28, 2023.

The OAG will release most of the responsive information with redactions allowed by law. *See, e.g.,* Open Records Decision No. 673 (2001). The OAG asserts, however, that the remaining responsive information is excepted from required public disclosure under the PIA. Pursuant to sections 552.301(b) and 552.301(e) of the Government Code, the OAG submits this brief to seek a decision as to whether section 552.107 of the Government Code applies to the information at issue. We have copied the requestor as a recipient of this brief pursuant to sections 552.301(d) and 552.301(e-1) of the Government Code. The information at issue is attached as Exhibit B.

I. Information Excepted From Required Public Disclosure Under Section 552.107: Privileged Attorney-Client Communications

Section 552.107(1) of the Government Code excepts from required public disclosure information "that the attorney general . . . is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct." Gov't Code § 552.107. Section 552.107 protects information that falls 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

¹ The requestor originally sent his request on June 8, 2023. The OAG sent a cost estimate on June 15, 2023, and the requestor narrowed his request on June 21, 2023. The OAG sent an amended cost estimate on July 7, 2023, and the requestor narrowed his request again on July 20, 2023.

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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *Id.* 503(b)(1)(A), (B), (C), (D), (E). 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).

Section 552.107(1) applies to communications between a governmental body and its attorney made in confidence to further the attorney's rendering of professional legal services to the governmental body. Attorney General opinions applying section 552.107(1) have permitted governmental bodies to withhold information their attorneys have received or generated in the capacity of a legal advisor. *See* Open Records Decision No. 462 at 10-11 (1987) (applying section 3(a)(7), predecessor to Section 552.107(1)).

Exhibit B consists of draft letters created by an Open Records Division ("ORD") attorney. These draft letters were reviewed by and discussed between ORD attorneys. Thus, these communications are between privileged parties and were made for the purpose of providing professional legal services to the OAG. Further, these communications were not intended to be disclosed and have not been disclosed to non-privileged parties. *See* Tex. R. Evid. 503(a)(5). Therefore, the OAG contends the information at issue may be withheld under section 552.107(1) of the Government Code.

II. Conclusion

The OAG respectfully requests a decision from the Open Records Division regarding the applicability of the argued exception as provided by the PIA.

Please do not hesitate to contact me at (512) 936-1946 if you have questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith Coffman', with a long, sweeping horizontal line extending to the right.

Meredith Coffman
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General

c: Mr. Stuart Martin
MuckRock News, Dept. MR147288

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(without enclosures)