



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 4, 2026

Mr. J. Eric Magee
Counsel for Colorado County
Allison, Bass & Magee, L.L.P.
1301 Nueces Street, Suite 201
Austin, Texas 78701

OR2026-023296

Dear Mr. Magee:

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# 26-023784.

The County of Colorado (the "county"), which you represent, received a request for specified communications during a defined period of time. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the procedural obligations of the county under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the specific exceptions that apply within ten business days of receiving the written request. *Id.* § 552.301(b). The county received the request for information on March 10, 2026. This office only counts business days as provided by section 552.0031 of the Government Code. *Id.* § 552.0031 (defining "business day" for purposes of the Act). Thus, the ten-business-day deadline of the county under section 552.301(b) was March 24, 2026. However, the envelope containing the initial request for a ruling from this office does not have a postmark and the county has not otherwise provided proof of the date the envelope was placed in the mail. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail).

Therefore, we find the county has failed to establish it complied with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Because the attorney-client privilege can provide a compelling reason to overcome the presumption of openness, we will address the applicability of section 552.107(1) to the information at issue. However, we find the county has failed to establish a compelling reason to address its remaining claimed exception.

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 "to facilitate 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: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit 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 some of the submitted information consists of communications involving attorneys for the county and their representatives and county employees in their capacities as clients. You state these communications were made in furtherance of the rendition of professional legal services to the county and the communications were intended to be, and have remained, confidential. Based on these representations and our review, we find the county has demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the county may withhold the information you indicated under section 552.107(1) of the Government Code. The remaining information must be released.¹

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/sb

Ref: ID# 26-023784

c: Requestor

¹ The information being released contains the requestor's e-mail address and the requestor has a right of access to it under section 552.137(b) of the Government Code. *See* Gov't Code § 552.137(b). We note Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold specific categories of information without the necessity of requesting an attorney general decision, including e-mail addresses of members of the public under section 552.137 of the Government Code. Thus, if the county receives another request for this same information from a person who does not have a right of access to it, Open Records Decision No. 684 authorizes the county to redact the requestor's e-mail address without the necessity of requesting an attorney general decision.