

Subject: [Records Center] Public Information Request :: R013746-090622
Date: Monday, September 19, 2022 at 3:56:10 PM Eastern Daylight Time
From: TEXAS AG Public Information
To: AO Records

EXTERNAL SENDER

Attachments:

[Lewis_R013746_15_day.pdf](#)
[R013746.pdf](#)

--- Please respond above this line ---

September 19, 2022

Ms. Emma Lewis
American Oversight
records@americanoversight.org
VIA E-MAIL ONLY

Re: Public Information Request No. R013746

Dear Ms. Lewis:

This e-mail is in response to your public information request to the Office of the Attorney General ("OAG"), received by the OAG on September 6, 2022.

The OAG has reviewed its files and has located the attached communications that are responsive to your request. Although the Public Information Act allows a governmental body to charge for providing documents in certain circumstances, the attached communications are being provided to you at no charge.

The OAG believes the remaining information responsive to your request is exempted from required public disclosure. We have requested a ruling on this information from the Open Records Division of the OAG. A copy of our brief to the Open Records Division is attached.

If you have any questions, please contact publicrecords@oag.texas.gov.

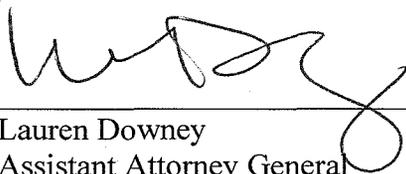
Sincerely,

Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General

To monitor the progress or update this request please log into the [Public Records Center](#)

GovQA logo

Pursuant to section 552.308(b), this is to confirm the brief at issue was timely placed in intra-agency mail addressed to the Open Records Division on September 19, 2022.



Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 19, 2022

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

Re: Public Information Request No. R013746

Dear Mr. Gordon:

On September 6, 2022, the Office of the Attorney General (“OAG”) received a public information request under the Public Information Act (“PIA”), Chapter 552, Government Code, from Ms. Emma Lewis. A copy of the request is attached as Exhibit A.

The OAG will release some of the responsive information. Our office asserts the remaining responsive information is excepted from required 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. The OAG has copied the requestor as a recipient of this brief pursuant to sections 552.301(d) and 552.301(e-1) of the Government Code. A representative sample of 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 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)).

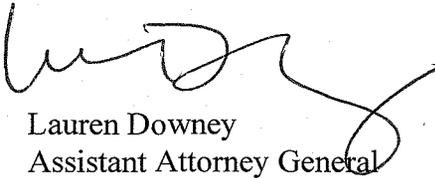
The communications at issue are between the Attorney General and the Deputy Attorney General for Legal Strategy discussing legal matters involving the OAG. The communications are between privileged parties and were made for the purpose of providing professional legal services to the State. Further, these 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 representative sample of information 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.

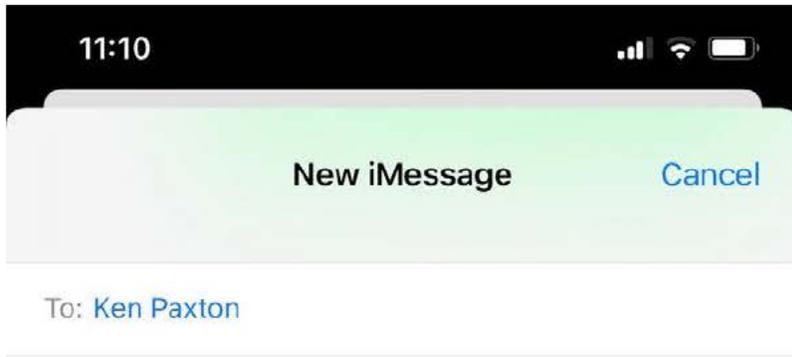
Please do not hesitate to contact me at (512) 475-4213 if you have questions or require additional information.

Sincerely,



Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General

cc: Ms. Emma Lewis
American Oversight
1030 15th St. NW, Suite B255
Washington, DC 20005
(without attachments)



11:11



New iMessage

Cancel

To: Ken Paxton

Sat, Jun 25, 4:21 PM

Thank you sir. Surgery went well. Got this nice morale boost this afternoon too:



You should wear that to work

Hahaha, if not to work, at least to my next hearing in federal court.



iMessage



