



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 8, 2005

Ms. Laura Garza Jiminez  
Nueces County Attorney  
901 Leopard, Room 207  
Corpus Christi, Texas 78401-3680

OR2005-07121

Dear Ms. Jiminez:

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# 229761.

The Nueces County Commissioners Court (the "county") received two requests from the same requestor for "correspondence, payments, contracts and bids" related to Dos Logistics ("Dos") and Omega Contracting, Inc. ("Omega"). You inform us that some of the requested information may implicate the proprietary interests of Dos and Omega. Accordingly, you state, and provide documentation showing, that you notified these companies of the requests and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). You explain that Omega has subsequently informed you that it does not object to the release of its bid. As such, you inform us that this information has been released to the requestor. You also claim that other requested information is excepted from disclosure under sections 552.107 and 552.137 of the Government Code. We have considered the arguments submitted by the county and Dos and have reviewed the submitted information. We have also considered comments received from the requestor's attorney. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Dos claims that certain home addresses and a cellular phone number contained in its proposal are protected under section 552.102 of the Government Code and common-law privacy.

Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). This office has found that section 552.102 only applies to information in the personnel file of an employee of a governmental body. Since the information Dos seeks to withhold is not in the personnel file of any employee of a governmental body, we determine that section 552.102 does not apply to this information, and it may therefore not be withheld on this basis.

We also understand Dos to claim that these home addresses and cellular phone number are protected based on the doctrine of common-law privacy. 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 the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has stated on several occasions that individuals’ home addresses and telephone numbers generally are not protected by common-law privacy under section 552.101. *See* Open Records Decision Nos. 554 at 3 (1990) (disclosure of a person’s home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as “intimate aspects of human affairs”). We also have frequently stated that a mere expectation of privacy on the part of the individual who provides information to a governmental body does not permit that information to be withheld under section 552.101. *See* Open Records Decision Nos. 479 at 1 (1987) (information is not confidential simply because the party that submitted the information anticipated or requested confidentiality), 180 at 2 (1977) (information is not excepted from disclosure solely because the individual furnished it with the expectation that access to it would be restricted), 169 at 6 (special circumstances required to protect information must be more than mere desire for privacy or generalized fear of harassment or retribution). Upon review of the information at issue, we conclude that the county may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy.

We note, however, that Dos’ proposal contains insurance policy numbers that are subject to section 552.136 of the Government Code.<sup>1</sup> This section states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body or third-party, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. The county must, therefore, withhold the insurance policy numbers we have marked pursuant to section 552.136.

We next address the county’s arguments with respect to the information submitted as Exhibits 2 and 3. You claim that Exhibit 3 is excepted from required public disclosure pursuant to section 552.107 of the Government Code. This section 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 Texas 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 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), (B), (C), (D), (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, no writ). 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 that “Exhibit 3 is an e-mail communication between an assistant county attorney and representatives of the Nueces County Judges’s Office” made for the purpose of providing

legal services. You further explain that the confidentiality of this communication has been maintained. Having considered your arguments and reviewed the submitted information, we agree that the information in Exhibit 3 reflects a privileged attorney-client communication and may be withheld under section 552.107(1).

You also claim that the e-mail addresses you have highlighted in Exhibit 2 are subject to section 552.137 of the Government Code. This section excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail addresses that you have highlighted do not appear to be of a type specifically excluded by section 552.137(c). As such, we conclude that the county must withhold the highlighted e-mail addresses pursuant to section 552.137; we have also marked an additional e-mail address that must be withheld on this basis. *See* Gov’t Code § 552.137(b).

In summary, the county may withhold the information submitted as Exhibit 3 under section 552.107 of the Government Code. The county must withhold the marked insurance policy numbers in Dos’ proposal and the highlighted and marked e-mail addresses in Exhibit 2 in accordance with sections 552.136 and 552.137 of the Government Code, respectively. The remaining submitted information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/jev

Ref: ID# 229761

Enc. Submitted documents

c: Ms. Jamie Powell  
Corpus Christi Caller-Times  
P. O. Box 9136  
Corpus Christi, Texas 78469-9136  
(w/o enclosures)

Mr. Randall L. Meredith  
The Rangel Law Firm, P.C.  
P. O. Box 2683  
Corpus Christi, Texas 78403-2683  
(w/o enclosures)

Ms. Celina Garza  
Dos Logistics  
555 North Carancahua Street  
Corpus Christi, Texas 78478  
(w/o enclosures)

Mr. Matthew W. Brown  
Wilson, Bellany, Brown & Wilson, L.L.P.  
3308 Broadway, Suite 300  
San Antonio, Texas 78209  
(w/o enclosures)

Mr. Kurt Diedrich  
Omega Contracting, Inc.  
900 Lincoln Avenue  
Robstown, Texas 78380  
(w/o enclosures)