



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2006

Mr. Marcos G. Ronquillo  
Godwin Gruber, L.L.P.  
1201 Elm Street, Suite 1700  
Dallas, Texas 75270-2064

OR2006-01357

Dear Mr. Ronquillo:

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# 241950.

The City of Lindale (the "city"), which you represent, received a request for: 1) invoice summaries sent by Godwin Gruber, L.L.P. (the "firm") to the city, 2) e-mails sent from a named city councilperson pertaining to the firm or two other named individuals, 3) the city charter, 4) the city's employee policy, and 5) a list of campaign contributors to the most recent political campaigns of three individuals.<sup>1</sup> You state that the city has released information responsive to items 1, 3, 4, and 5 of the request. You have submitted copies of certain e-mails for our review. You claim that portions of the submitted information are not subject to the Act. In addition, you claim that portions of the submitted information are not responsive to the request. In the alternative, you assert that the submitted information is excepted from disclosure pursuant to sections 552.101, 552.107, 552.109, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the applicability of the Act. The Act is only applicable to "public information." *See* Gov't Code § 552.021. Section 552.002(a) defines public information as

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<sup>1</sup>We note that the city received clarification from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

“information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” Gov’t Code § 552.002(a). Information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if it is maintained for a governmental body, the governmental body owns or has a right of access to the information, and the information pertains to the transaction of official business. *See* Open Records Decision No. 462 (1987).

After reviewing the submitted information, we conclude the information we have marked is purely personal in nature and does not constitute “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for the city. *See* Gov’t Code § 552.021; *see also* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Thus, the information we have marked does not constitute public information, and the Act does not require the city to release it to the requestor.

We next address your claim that portions of the submitted information are not responsive to this request. You contend that the e-mails you have highlighted blue are not responsive to the present request because they were not sent by the named individual. Upon reviewing the request, we agree that the e-mails that we have marked were not sent by the named individual and are not responsive to the present request. This ruling does not address the public availability of this information, and it need not be released in response to this request. However, the remaining e-mails were sent by the named individual and are responsive to the request. Since these e-mails are responsive to the request, we will address your claimed exceptions with respect to them.

We turn next to your contention that the portions of the submitted information that you have highlighted green are protected under the attorney-client privilege based on section 552.107 of the Government Code. When asserting the attorney-client privilege under section 552.107, 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 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)(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).

In this instance, you argue that portions of the submitted e-mails that you have highlighted green are privileged attorney-client communications. You have explained that these communications were made in confidence between outside counsel and city representatives for the purpose of providing legal advice to the city council. Based on these representations and our review of the information at issue, we agree that the information that you have highlighted in green consists of privileged attorney-client communications that the city may withhold under section 552.107.

We now address your argument under 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). The e-mail addresses you have marked in the remaining information do not appear to be of a type specifically excluded by section 552.137(c). In addition, you inform us that the city has not received consent for the release of the e-mail addresses at issue. Therefore, the city must withhold the e-mail addresses you have marked in the remaining information under section 552.137.

We note, that a portion of the remaining submitted information may be subject to section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(1) excepts from public

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<sup>2</sup> The Office of the Attorney General will raise mandatory exceptions like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, pursuant to section 552.117(a)(1), the city must withhold the information we have marked if the official elected under section 552.024, prior to the city's receipt of this request, to keep that information confidential. The city may not withhold this information under section 552.117(a)(1) if the official did not make a timely election.

In summary, the city may withhold the portions of the submitted information that it has highlighted green pursuant to section 552.107 of the Government Code. The city must withhold the e-mail addresses that you have highlighted pink in the remaining information under section 552.137 of the Government Code. The information that we have marked must be withheld under section 552.117 of the Government Code to the extent it applies. The remaining submitted information must be released to the requestor.

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); *Texas 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 Office of the Attorney General 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. 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/segh

Ref: ID# 241950

Enc. Submitted documents

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(w/o enclosures)