



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 23, 2008

Mr. Alan P. Petrov  
Johnson, Radcliffe, Petrov & Bobbit, P.L.L.C.  
1001 McKinney, Suite 1000  
Houston, Texas 77002-6424

OR2008-05353

Dear Mr. Petrov:

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# 308096.

The City of West University Place (the "city"), which you represent, received a request for 1) all correspondence regarding the city secretary from April 2006 through February 19, 2008, 2) credit card statements, travel expenditures, and reimbursements to the city of the city manager and the human resource manager for specified dates, and 3) all bonuses or "one time pay adjustments" given to employees for specified dates. You state you have released some of the information responsive to item one and will release all of the information responsive to items two and three. You claim that a portion of the submitted correspondence regarding the former city secretary is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that a portion of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-03150 (2008). The request in Open Records Letter No. 2008-03150 asked for all written communications regarding the city secretary from March 2007 through the date of the request, December 17, 2007. In Open Records Letter No. 2008-03150, we ruled that some of the requested correspondence may be withheld under section 552.107 of the Government Code and that certain e-mail addresses must be withheld under section 552.137 of the Government Code, unless the owners had affirmatively consented to their disclosure. We ruled, however, that the remaining information must be released. The correspondence responsive to the instant request, dated between March 2007 and December 17, 2007, is identical to information previously ruled upon by this office. We conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the city must continue to rely on that ruling as a previous determination and withhold or release the submitted correspondence, which we have clipped and marked, in accordance with Open Records Letter No. 2008-03150. *See* Open Records Decision No. 673

(2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We will, however, consider your arguments against disclosure for the remaining submitted correspondence that was not subject to the previous ruling. You assert that the information marked with an "F" is excepted under section 552.107 of the Government Code. Section 552.107(1) 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 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 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 the information at issue reveals communications between the city attorney, outside counsel, and city employees and officials. You have identified each party to the communications. You represent that these communications were not intended to be

disclosed to persons other than those to whom the communications were made and the communications were made in furtherance of the rendition of professional legal services for the city. You also represent that the confidentiality of these communications has been maintained. Based on your representations and our review of the information at issue, we conclude that section 552.107 is applicable to this information. Thus, the city may withhold the information, which we have marked, under section 552.107 of the Government Code.<sup>1</sup>

Next, we address your assertion that the e-mail addresses in the documents marked with an "T" are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The e-mail addresses at issue are not of a type specifically excluded by section 552.137(c). Further, you state that you are not seeking to withhold the e-mail addresses of officials or employees of the city. You do not state that the owners of these e-mail addresses have consented to their public disclosure. Therefore, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners have affirmatively consented to their disclosure.

In summary, the city must continue to withhold or release the submitted correspondence that was previously ruled upon by this office in Open Records Letter No. 2008-03150. As to the remaining correspondence: 1) the city may withhold the information we have marked under section 552.107 of the Government Code and 2) the city must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owners have affirmatively consented to their disclosure. The remaining information in "T" 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of

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<sup>1</sup>As our ruling is dispositive as to this information, we need not address your remaining arguments against disclosure of this information.

such a challenge, 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 challenge 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,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 308096

Enc. Submitted documents

c: Ms. Marilyn Griffin  
3762 Sunset Boulevard  
West University Place, Texas 77005-2030  
(w/o enclosures)