



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2008

Mr. Douglas G. Cornwell
Dietz & Jarrard, P.C.
106 Fannin Avenue East
Round Rock, Texas 78664-5219

OR2008-11602

Dear Mr. Cornwell:

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# 319739.

The City of Cedar Park (the "city"), which you represent, received a request for information pertaining to 1) the identity of the management/IT consulting firm sought by the city in March 2007 to complete a comprehensive audit of the city's municipal court; 2) the new administrative procedures in place at the municipal court; 3) the identity, and description of, the new case management technology to be used by the municipal court; 4) corrective measures which have been undertaken by the municipal court staff; 5) the identity of the training resources and tools the city to help city employees; 6) the identity of new management recruited to oversee and manage the administrative process; 7) any reports submitted to the city by a named individual concerning her audit of the municipal court; and 8) the identity of the person who authored the "Timeline of Events" website and the date it first appeared on the city's website. You state that some of the submitted information is not subject to the Act. You also claim that the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you inform us that the city asked the requestor for clarification on the requests for categories 1, 6, and 8. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific

records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You inform us that the requestor has not responded to this request for clarification; therefore, the city is not required to release any responsive information for which it sought clarification. But if the requestor responds to the clarification request, the city must seek a ruling from this office before withholding any responsive information from the requestor. See Open Records Decision No. 663 (1999) (ten-business-day deadline tolled while governmental body awaits clarification). Because you have been able to identify certain types of records that you believe fall within the scope of the request, we will address your arguments for that information.

We next note that you have only submitted standing motions and orders of the municipal court and an e-mail between the city attorney and a city staff member. It appears from your arguments that other responsive information exists for which you claim section 552.103 of the Government Code. You did not, however, submit this information for our review. Pursuant to section 552.301(e) a governmental body that requests a ruling from this office is required to submit a copy of the specific information it wants to withhold, or a representative sample of it. Gov't Code § 552.301(e)(1)(D). If a governmental body does not comply with section 552.301(e), the information requested is presumed public and must be released unless there is a compelling reason to withhold the information. *Id.* § 552.302. Section 552.103 is a discretionary exception to disclosure that is designed to protect the governmental body's interests and does not constitute a compelling reason to withhold the information. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, by not submitting the responsive information to this office as required by section 552.301(e), the city has waived its claim under section 552.103. Therefore, to the extent that other information responsive to this request exists, it must be released at this time.

Next, you state, and the submitted documents reflect, that Exhibit C consists of records maintained by the city's municipal court. We note that the Act does not apply to records of the judiciary. Gov't Code § 552.003(1)(B). See Attorney General Opinion DM-166 (1992). Accordingly, the city need not release the requested information in response to the present request.¹ However, records of the judiciary may be public by other sources of law. See Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Loc. Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); see also Attorney General Opinions DM-166 at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974); see *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57

¹As Exhibit C is not subject to the Act, we need not address your argument against the disclosure of Exhibit C.

(Tex.1992) (documents filed with courts are generally considered public and must be released).

Finally, you contend that Exhibit D is excepted from disclosure under section 552.107(1) of the Government Code, which 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 Exhibit D reveals a communication exchanged between the city’s outside counsel, city attorney, and the city’s communications director. You represent that this communication was made for the purpose of facilitating the rendition of professional legal services. You also represent that the confidentiality of this communication has been maintained. Based on your representations and our review, we conclude that section 552.107

is applicable to Exhibit D. Thus, the city may withhold Exhibit D under section 552.107 of the Government Code.²

In summary, the city is not required to release any responsive information to categories 1, 6, and 8, for which it sought, but did not receive, clarification from the requestor. To the extent the city maintains information responsive to categories 2, 3, 4, 5, and 7, other than the information that was submitted as Exhibits C and D, the city must release it at this time. The judicial records in Exhibit C are not subject to the Act. The city may withhold Exhibit D under section 552.107 of the Government Code.

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 such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

²As our ruling is dispositive as to this information, we need not address your remaining argument against the disclosure of Exhibit D.

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# 319739

Enc. Submitted documents

c: Ms. Cynthia Grace Bozelli
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(w/o enclosures)