



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2009

Ms. Heather Silver
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR2009-00814

Dear Ms. Silver:

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# 332872.

The City of Dallas (the "city") received a request for the "total project files for the creation, development, funding, maintenance and engineering for Hulsey Park[,] including total project costs from the General Fund, the Park Department Reserve Fund and any bond funds." You inform us the city will provide a portion of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative samples of information.²

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body

¹You also argue the information is privileged under rule 503 of the Texas Rules of Evidence. We note that as the submitted information is not subject to section 552.022 of the Government Code, rule 503 does not apply in this instance. *See* Open Records Decision Nos. 676 at 4 (2002).

²We assume the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

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 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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *See* 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, 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 Exhibit B consists of a confidential communication between a city department and an assistant city attorney, made for the purpose of seeking professional legal services. You indicate this communication was confidential when made and has remained confidential. Based on these representations and our review of the information at issue, we agree Exhibit B is a privileged attorney-client communication. Accordingly, the city may withhold Exhibit B pursuant to section 552.107 of the Government Code.

Next, section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). This office has determined insurance policy numbers are access device

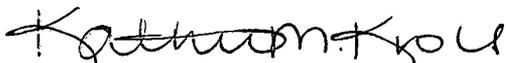
numbers for the purposes of section 552.136. Thus, the city must withhold the insurance policy numbers you have highlighted in Exhibit C under section 552.136 of the Government Code.

In summary, the city may withhold Exhibit B under section 552.107 of the Government Code. The city must withhold the insurance policy numbers you have highlighted in Exhibit C under section 552.136 of the Government Code. The remaining information in Exhibit C must be released to the requestor.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 332872

Enc. Submitted documents

c: Requestor
(w/o enclosures)