



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2009

Mr. Jesus Toscano, Jr.
Administrative Assistant City Attorney
Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla Room 7BN
Dallas, Texas 75201

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2009-02967

Dear Mr. Toscano and 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# 336785.

The City of Dallas (the "city") received a request for communications and other information involving eight named individuals or entities, the McCommas landfill, and a specified time interval. You state that some of the requested information either has been or will be released. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.107, 552.111, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.¹

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 has the burden of providing the necessary facts to demonstrate the elements of the privilege

¹This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

in order to withhold the information at issue. *See* 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. *See* 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. *See 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 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. *See* TEX. R. EVID. 503(b)(1)(A)-(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. *See 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 seek to withhold the information submitted as Exhibits G, H, I, and J under section 552.107(1). You inform us that the information at issue consists of privileged communications between and among attorneys for the city, city staff, and private attorneys and a consultant retained by the city. You have identified the parties to the communications. You state that the communications were made in connection with the rendition of professional legal services to the city. You do not indicate that the privilege has been waived. Based on your representations and our review of the information at issue, we conclude that the city may withhold most of the information in Exhibits G, H, I, and J under section 552.107(1).² We find that you have not demonstrated that the submitted proposals by private law firms to provide legal services to the city constitute communications between privileged parties. *See* TEX. R. EVID. 503(b)(1)(A)-(E). We therefore conclude that the city

²As we are able to make this determination, we need not consider your other arguments against disclosure of Exhibit G.

may not withhold that information, which we have marked in Exhibit I, under section 552.107(1). As you claim no other exception to the disclosure of the marked information, it must be released.

You also claim section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. You have marked a telephone number in Exhibit L that the city seeks to withhold under section 552.117. We agree that the marked information must be withheld under section 552.117(a)(1) if it is the home or personal cellular telephone number of a city employee who timely requested confidentiality for that information under section 552.024.

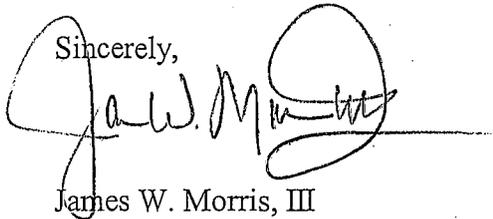
Lastly, we address your claim under section 552.137 of the Government Code. Section 552.137 provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," 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. We agree that the personal e-mail address that you have marked in Exhibit L must be withheld under section 552.137, unless the owner of the e-mail address has affirmatively consented to its public disclosure.

In summary: (1) except for the information in Exhibit I that we have marked for release, the city may withhold Exhibits G, H, I, and J under section 552.107(1) of the Government Code; (2) the marked telephone number in Exhibit L must be withheld under section 552.117(a)(1) of the Government Code if it is the home or personal cellular telephone number of a city employee who timely requested confidentiality for that information under section 552.024 of the Government Code; and (3) the marked e-mail address in Exhibit L must be withheld under section 552.137 of the Government Code, unless the owner of the e-mail address has consented to its disclosure. The rest of the submitted information must be released.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 336785

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Cause No. D-1-GV-09-000396

THE CITY OF DALLAS,
Plaintiff,

v.

GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS,
Defendant.

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§

IN THE DISTRICT COURT

419th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

Filed in The District Court
of Travis County, Texas

JUL 27 2011
At J. B. P. M.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff the City of Dallas and Defendant Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled.

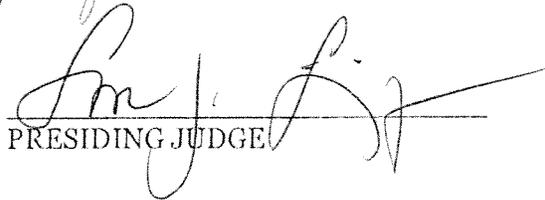
After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

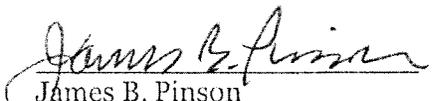
1. In settlement of this dispute, the City of Dallas and the Attorney General have agreed that in accordance with the PIA and under the facts presented, the City may withhold some of the information currently at issue, specifically, attorney-client communications contained on pp. 1-3, 11-14, 26-36, 47-49, and 54-57 of Ex. I, that are excepted from disclosure by Tex. Gov't Code § 552.107;
2. The City has released or will release all other information at issue to the requestor, except that described in ¶ 1, above;
3. All costs of court are taxed against the parties incurring the same;
4. Each party will bear its own attorneys' fees;

5. All relief not expressly granted is denied; and
6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 27th day of July, 2011.


PRESIDING JUDGE

APPROVED:


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