



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2009

Ms. Beth Vidaurri
Public Information Officer
Corpus Christi Regional Transportation Authority
5658 Bear Lane
Corpus Christi, Texas 78405

OR2009-06533

Dear Ms. Vidaurri:

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# 343292.

The Corpus Christi Regional Transportation Authority (the "authority") received two requests from the same requestor for all information, including eight specified categories of information, regarding the hiring of the current authority chief executive officer. You state the authority has provided some of the requested information to the requestor. You claim portions of the submitted memorandum, e-mails, contact list, and resumes, as well as requested tape recordings, are excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential, such as section 551.104 of the Open Meetings Act, chapter 551 of the Government Code. Section 551.104 provides in part "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." *Id.* § 551.104(c). Thus, such information cannot be released to a member of the public in response to an open records request. *See* Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only

under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See* Gov't Code § 551.146(a)-(b); *see also* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether governmental body may withhold such information under statutory predecessor to section 552.101 of the Government Code). You inform us part of the responsive information consists of tape recordings made during closed meetings of the authority's board of directors. Based on your representation, we agree the authority must withhold the closed meeting tape recordings under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.

You assert the contact information consisting of names, addresses, telephone numbers, and e-mail addresses in Exhibits 2 and 3 is confidential because it was gathered from potential applicants under an agreement the information would be kept confidential. Generally, governmental bodies are prohibited from entering into agreements to keep information confidential. Open Records Decision Nos. 514 (1988), 484 (1987), 479 (1987). The Act requires the release of all information held by governmental bodies unless one of the Act's specific exceptions protects the information from required disclosure. *Id.* Unless a governmental body is explicitly authorized to make an enforceable promise to keep information confidential, it may not enter into such an agreement. *See* Open Records Decision 114 (1975). You have provided no evidence the authority has the requisite statutory authorization to create confidentiality based on an agreement. As such, the authority is prohibited from withholding any of the contact information in Exhibits 2 and 3 based on a confidentiality agreement.

You also claim the contact information in Exhibits 2 and 3 is confidential under section 552.101 of the Government Code. However, you have not directed our attention to any law, nor are we aware of any law, that makes the names, addresses, and telephone numbers at issue confidential. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the authority may not withhold the names, addresses, and telephone numbers in Exhibits 2 and 3 under section 552.101 of the Government Code. As you have claimed no other exceptions to disclosure for this information, it must be released.

We note, however, some of the e-mail addresses in Exhibits 2 and 3 may be protected under section 552.137 of the Government Code.¹ This section provides "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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. Furthermore, because the purpose of section 552.137 is to protect the privacy interests of individuals, the requestor's e-mail address may not be withheld from him under section 552.137. *See id.* § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Thus, the authority must withhold the personal e-mail addresses we have marked in Exhibits 2 and 3 under section 552.137, unless the owners of the e-mail addresses have affirmatively consented to their public disclosure.

Section 552.107(1) of the Government Code 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 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). 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.* 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).

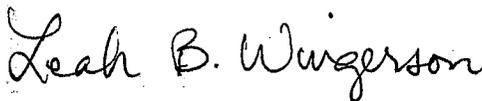
You assert the e-mails and attachments submitted as Exhibit 1 consist of communications made for the purpose of facilitating the rendition of professional legal services. You state the communications were between an authority attorney and authority personnel, and were to be kept confidential among the intended parties. Finally, you state the confidentiality of the communications has been maintained. Based on your representations and our review, the authority may withhold Exhibit 1 under section 552.107 of the Government Code.

In summary, the authority must withhold the closed meeting tape recordings under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code, and the marked e-mail addresses in Exhibits 2 and 3 under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their public disclosure. The authority may withhold Exhibit 1 under section 552.107 of the Government Code. The remaining 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 343292

Enc. Submitted documents

c: Requestor
(w/o enclosures)