



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2009

Mr. Warren M. S. Ernst
Chief of the General Counsel Division
City of Dallas, Office of the City Attorney
1500 Marilla, Room 7DN
Dallas, Texas 75201

OR2009-12500

Dear Mr. Ernst:

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# 354309.

The City of Dallas (the "city"), received a request for letters, faxes, e-mails, phone messages and notes regarding a specified address. You claim the submitted information is excepted from disclosure under sections 552.107, 552.111, and 552.137 of the Government Code and privileged under Texas Rule of Evidence 503.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note that a portion of the submitted information, which we have marked, is not responsive as it does not pertain to the address at issue. The city need not release non-responsive information in response to this request, and this ruling will not address that

¹We note in your letter of July 15, 2009, you no longer assert the other exceptions you raised in your initial correspondence with our office.

²We assume that the "representative sample" of records submitted to this office is 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 that those records contain substantially different types of information than that submitted to this office.

information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed).

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 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. 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 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. *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 state that Exhibit B consists of confidential communications between the city and its attorneys made for the purpose of facilitating the rendition of professional legal services. You have identified the parties to the communications. Based on your representations and our review, we find that the city may withhold Exhibit B under section 552.107 of the Government Code.³

You have marked an e-mail address in Exhibit C as confidential pursuant to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a

³As our ruling is dispositive, we do not address your other argument for this information.

member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The address you have marked is not a type specifically excluded by section 552.137. Accordingly, the city must withhold the marked e-mail address under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b). As you raise no other exceptions to disclosure, 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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 354309

Enc. Submitted documents

c: Requestor
(w/o enclosures)