



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 15, 2009

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

OR2009-13009

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# 355123.

The City of Dallas (the "city"), received a request for information relating to a specified complaint filed with the city's Fair Housing Office. You state the city will release some of the responsive information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.107, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted information, which we have marked, is subject to section 552.022 of the Government Code. Section 552.022 provides that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

~~(17) information that is also contained in a public court record[.]~~

Gov't Code § 552.022(a)(17). In this instance, the submitted information includes court-filed documents subject to section 552.022(a)(17). The city must release this information, which we have marked, unless it is expressly confidential under other law. You raise sections 552.101, 552.130, and 552.147, which are "other law" for purposes of the

documents subject to section 552.022(a)(17).<sup>1</sup> We note, however, that while you raise section 552.101 in conjunction with common-law privacy for portions of these documents, information that has been filed with a court is not protected by common-law privacy.<sup>2</sup> See *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, the city may not withhold the information it has marked in the court-filed documents based on section 552.101 of the Government Code in conjunction with common-law privacy. However, we will consider your arguments under section 552.130 of the Government Code for this information. We will also consider your arguments under sections 552.101 and 552.107 for the remaining information not subject to 522.022.

You have marked Texas motor vehicle record information in the documents subject to 522.022(a)(17) under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130(a)(1), (2). We agree the city must withhold the marked information that relates to a Texas motor vehicle license, title, or registration pursuant to section 552.130. The remaining information in the court-filed documents must be released.

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

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<sup>1</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. Gov't Code § 552.147(b).

<sup>2</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy.

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 inform us the information you have marked consists of communications that were made between assistant city attorneys and city personnel in city departments. You state that the documents at issue consist of communications regarding legal advice and opinions that have not been disclosed to third parties and have been kept confidential. Based on your representations and our review, we find that the city may withhold the information it has marked under section 552.107 of the Government Code.<sup>3</sup>

You assert that the remaining information is protected from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. 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 the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82.

This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See Open Records Decisions Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public’s interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).* You state the information you have marked in the remaining information does not reflect transactions

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

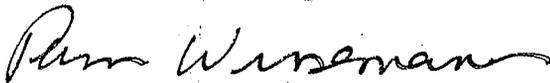
between an individual and a governmental body. Based on your representations and our review, we agree that some of the remaining information consists of personal financial information that is not of legitimate public concern. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that the remaining information you have marked does not consist of personal financial information, nor is it highly intimate or embarrassing. Thus, the remaining information may not be withheld under common-law privacy.

In summary, the city must withhold the marked information in the court-filed documents under section 552.130 of the Government Code. The remaining information in the court-filed documents subject to section 552.022(a)(17) must be released. The city may withhold the information it has marked under section 552.107 of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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](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# 355259

Enc. Submitted documents

c: Requestor  
(w/o enclosures)