



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2010

Ms. Sharlene N. Collins
Armbrust & Brown, L.L.P.
Attorneys for North Austin Municipal Utility District No. 1
100 Congress Avenue, Suite 1300
Austin, Texas 78701-2744

OR2010-00908

Dear Ms. Collins:

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# 367487.

The North Austin Municipal Utility District No. 1 of Travis and Williamson Counties (the "district"), which you represent, received a request for meeting minutes and documents regarding or making reference to a named individual during a specified time period, any documents regarding any Architectural Control Committee meeting or action related to any home or homeowner in a specified subdivision during a specified time period, any documents regarding meetings conducted or actions taken pertaining to the enforcement of any restrictive covenant by the district during a specified time period, and meeting minutes or any documents regarding a named individual or his property during a specified time period. You claim that some of the requested information is 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.

Initially, we address your argument under section 552.107 of the Government Code, as this is the potentially most encompassing exception you claim. Section 552.107(1) 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. 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 pet.). 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 Exhibits B and C constitute confidential communications between attorneys for the district and staff of the district. You state these communications were made for the purpose of rendering or seeking professional legal services for the district. You also indicate these communications were confidential when made and have remained confidential. Based on these representations and our review of the information at issue, we agree that, except where we have marked for release, the e-mails in Exhibit C constitute privileged attorney-client communications. However, we find you have not sufficiently demonstrated the communications in Exhibit B and the marked e-mails in Exhibit C constitute communications between privileged parties. Accordingly, except as we have marked for release, the district may withhold Exhibit C pursuant to section 552.107 of the Government Code.

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. You raise section 552.101 in conjunction with the common-law informer’s privilege, which Texas courts have long recognized. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer’s privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer’s identity. See *Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement

within their particular spheres.” *See* Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The privilege excepts the informer’s statement only to the extent necessary to protect the informer’s identity. *See* Open Records Decision No. 549 at 5 (1990).

You state that the remaining information identifies persons who reported alleged violations of restrictive covenants. You explain that section 54.237 of the Water Code authorizes the district to enforce restrictive covenants pertaining to real property located within the district’s boundaries. You also state that under section 202.004 of the Property Code, a violation of a restrictive covenant can result in a civil penalty of up to \$200.00 per day. Based on your representations, we have marked the information that the district may withhold under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

We note the remaining information contains Texas motor vehicle record information. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.¹ Thus, the district must withhold the Texas license plate numbers we have marked in the remaining information under section 552.130 of the Government Code.²

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a 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). Section 552.137 does not apply to a general business address nor to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of the e-mail addresses at issue. Therefore, provided that the e-mail addresses at issue are those of private individuals and not general business addresses, the district must withhold the e-mail addresses we have marked under

¹The Office of the Attorney General will raise mandatory exceptions such as sections 552.130 and 552.137 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

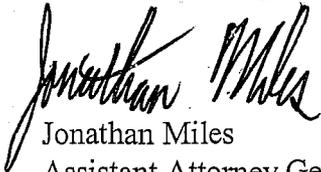
section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to disclosure.³

In summary, except as we have marked for release, the district may withhold Exhibit C pursuant to section 552.107 of the Government Code. The district may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The district must withhold the Texas license plate numbers we have marked in the remaining information under section 552.130 of the Government Code. The district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 367487

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.