



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 19, 2010

Ms. Amy L. Sims  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2010-03915

Dear Ms. Sims:

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# 374508.

The City of Lubbock (the "city") received two requests from the same requestor for four categories of information regarding two named individuals, their dogs, and a specified address. You indicate that some of the requested information has been released. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the information you submitted.

Initially, we find that some of the information submitted as Exhibit C does not fall within any of the four categories of requested information and thus is not responsive to either of the instant requests. This decision does not address the public availability of the non-responsive

---

<sup>1</sup>Although you also raise sections 552.103, 552.111, 552.117, and 552.137 of the Government Code, you have submitted no arguments in support of the applicability of those exceptions. Accordingly, this decision does not address sections 552.103, 552.111, 552.117, and 552.137. *See* Gov't Code §§ 552.301(e)(1)(A) (governmental body must submit written comments stating why claimed exception applies to information at issue), .302.

information, which we have marked, and the city need not release that information in response to these requests.<sup>2</sup>

Next, we address your claim under section 552.107 of the Government Code for the information submitted as Exhibit B. 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. *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 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 state that Exhibit B consists of communications between an attorney for and a representative of the city. You do not indicate that the communications have been disclosed to any non-privileged party. Based on your representations and our review of the information

---

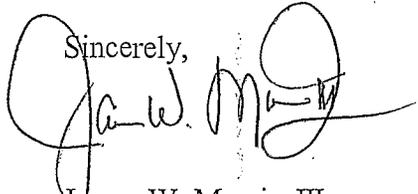
<sup>2</sup>As we are able to make this determination, we need not address your claims for the non-responsive information under sections 552.101, 552.108, and 552.130 of the Government Code.

at issue, we conclude that the city may withhold Exhibit B under section 552.107(1) of the Government Code. The rest of the responsive 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

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

JWM/cc

Ref: ID# 374508

Enc: Submitted documents

c: Requestor  
(w/o enclosures)