



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2010

Mr. Brandon R. Wade
McDonald Sanders, P.C.
For Wise County
777 Main Street, Suite 1300
Fort Worth, Texas 76102

OR2010-05327

Dear Mr. Wade:

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# 376345.

Wise County (the "county"), which you represent, received a request for the following information related to the county's purchase of real property: (1) the purchase and sale contract, (2) "all documentation regarding negotiations of said property[.]" and (3) the executive summary from an appraisal stating the appraised value of the property. You state that information responsive to item one of the request has been provided to the requestor, but the county has no information responsive to item three of the request.¹ You claim that some of the submitted information is excepted from disclosure under sections 552.107 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that the county asked the requestor to clarify item two of the request because it is "overbroad and vague." We note that a governmental body may communicate

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

with a requestor for the purpose of clarifying or narrowing a request for information. *See* Gov't Code § 552.222(b) (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, No. 07-0931, 2010 WL 571972, at *3 (Tex. Feb. 19, 2010). However, a governmental body must make a good faith effort to relate a request for information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). You indicate the county has not received a response to its request for clarification. In this case, as you have submitted responsive information for our review and raised exceptions to disclosure for this information, we consider the county to have made a good faith effort to identify the information that is responsive to item two of the request, and we will address the applicability of the claimed exceptions to the submitted information. We further determine that the county has no obligation at this time to release any additional information that may be responsive to the part of the request for which it has not received clarification. However, if the requestor responds to the request for clarification, the county must again seek a ruling from this office before withholding any additional responsive information from the requestor. *See* *City of Dallas*, No. 07-0931, 2010 WL 571972, at *3.

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 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 that the information in Exhibits 1 through 7 consists of communications between the county's attorneys and representatives of the county. You have identified the parties to the communications. You state that these communications were made in the furtherance of the rendition of professional legal services to the county and were not disclosed to any other person other than the person to whom they were made. Based on your representations and our review of the information at issue, we find you have demonstrated the applicability of the attorney-client privilege to the information in Exhibits 1 through 7. Therefore, the county may withhold this information under section 552.107 of the Government Code.

You seek to withhold the e-mail addresses you have marked in Exhibit 8 as confidential pursuant to section 552.137 of the Government Code. Section 552.137 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)*. The e-mail addresses at issue do not appear to be of types specifically excluded by section 552.137(c) of the Government Code. You do not state that the owners of the e-mail addresses at issue have consented to the release of their e-mail addresses. Accordingly, the county must withhold the e-mail addresses you have marked in Exhibit 8 under section 552.137 of the Government Code unless the owners affirmatively consent to their disclosure.²

In summary, the county may withhold the information in Exhibits 1-7 under section 552.107 of the Government Code. The county must withhold the e-mail addresses you have marked in Exhibit 8 under section 552.137 of the Government Code unless the owners affirmatively consent to their disclosure. The remaining submitted information must be released to the requestor.

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

²We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 376345

Enc. Submitted documents

c: Requestor
(w/o enclosures)