



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 2, 2010

Mr. Leonard V. Schneider  
Attorney for City of Splendora  
Liles Parker, PLLC  
525 East Sam Houston Parkway North, Suite 415  
Houston, Texas 77060

OR2010-18104

Dear Mr. Schneider:

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# 401786.

The City of Splendora (the "city"), which you represent, received a request for (1) reports, communications, records, and other documents from a specified time period that relate to Parkland Community Subdivision or the Amending Plat, (2) all documents from a specified time period pertaining to both a named individual and construction, permits, or approvals of the Subdivision or the Amending Plat, (3) all documents from a specified time period that relate to a named individual, and (4) any documents demonstrating that a particular deed affects property titles in the Subdivision or the Amending Plat. You state that some responsive information has already been released to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Gov't Code § 552.107. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege. 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. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding). 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. 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. Fourth, the attorney-client privilege applies only to a confidential communication, *id.*, 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 state that the submitted information, with the exception of the information you have marked in documents 54 through 57, was communicated between the city attorney, city staff, city council members, and contract city employees acting as agents of the city. You indicate the communications were made to facilitate the rendition of legal advice to the city. You have identified the majority of the parties to the communications. You state that these communications were made in confidence and have maintained their confidentiality. Based on your representations and our review, we conclude that the city may withhold most of the submitted information under section 552.107 of the Government Code. However, document 47, which we have marked, contains communications with parties not identified by you as clients, client representatives, attorneys, or attorney representatives. Thus, you have failed to demonstrate there is an attorney-client relationship between the communicants in the correspondence at issue. *See Open Records Decision No. 518* (1989). Accordingly, document 47 may not be withheld under section 552.107. As you have raised no other exception for document 47, it must be released. The remaining information may be withheld under section 552.107.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID# 401786

Enc. Submitted documents

c: Requestor  
(w/o enclosures)