ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2010

Ms. Luz E. Sandoval-Walker
Assistant City Attorney
City of El Paso
810 East Overland Avenue
El Paso, Texas 79901-2516

OR2010-18811

Dear Ms. Sandoval-Walker:

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# 403080 (El Paso Reference No. 2010-10-10-AG).

The City of El Paso (the "city") received a request for specified policies, the vehicle identification numbers of specified automobiles involved in certain accidents, information pertaining to a specified automobile accident, information pertaining to a named individual and speeding or collision incidents, and any information created in response to a specified e-mail. You state that the city has released some of the policies requested. You claim that the submitted 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 note that some of the submitted information, which we have marked, is not responsive to the instant request for information because it does not pertain to the named individual and his involvement in collision or speeding incidents. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release that information in response to the request.

Next, we note that you have only submitted information responsive to the requests for information pertaining to a named individual and speeding or collision incidents and information created in response to a specified e-mail, as well as the CR-3 accident report pertaining to the specified automobile accident. You state that the city informed the

requestor that the city does not answer questions and that one of his requests was too ambiguous. We note that the Act does not require a governmental body to answer factual questions in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Accordingly, we assume the city has made a good faith effort to do so and, to the extent any information responsive to the requestor's other requests existed and was maintained by the city on the date the city received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note Exhibit D contains the CR-3 accident report form from the specified automobile accident, which was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the submitted information reveals the requestor has provided the city with two of the specified items of information. Accordingly, the city must release the submitted CR-3 accident report form to this requestor in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

You claim that the remaining information in Exhibit D is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information if it (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 that a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history).

Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note that information relating to routine traffic violations is not excepted from release under common-law privacy. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, all of the remaining responsive information in Exhibit D pertains to routine traffic violations. Thus, the remaining information in Exhibit D is not confidential under common-law privacy, and the city may not withhold it under section 552.101 of the Government Code on that basis. As you raise no further exceptions to its disclosure, the remaining responsive information in Exhibit D must be released.

Next, you claim Exhibit B is excepted from disclosure under section 552.107 of the Government Code, which 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 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 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). 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, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *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. *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).

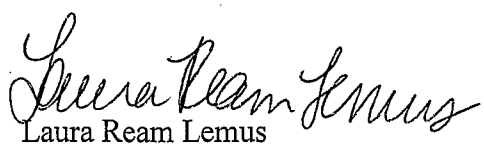
You state that the e-mails in Exhibit B include communications between attorneys for the city, the city's chief of police, and city personnel. You state that these communications were made in furtherance of the rendition of legal services to the city, and you inform this office that these communications have remained confidential. Based on your representations and our review, we agree that the e-mails we have marked constitute privileged attorney-client communications. Accordingly, the city may withhold the information we have marked under section 552.107 of the Government Code. However, as you acknowledge, the remaining e-mails in Exhibit B were communicated with the requestor, a non-privileged party. Thus, we find you have failed to demonstrate the applicability of the attorney-client privilege to the remaining the e-mails in Exhibit B and they may not be withheld under section 552.107 of the Government Code.

In summary, the city must release the submitted CR-3 accident report form to this requestor in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. The city may withhold the information we have marked in Exhibit B under section 552.107 of the Government Code. The city must release the remaining responsive information to the requestor.[1]

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/tf

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[1]We note that the requestor has a special right of access to his own e-mail address, which being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests).

Ref: ID# 403080

Enc. Submitted documents

c: Requestor
(w/o enclosures)