



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 8, 2011

Mr. C. Patrick Phillips  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2011-04885

Dear Mr. Phillips:

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# 414664 (City of Fort Worth Public Information Request No. W005814).

The City of Fort Worth (the "city") received a request for 1) "all contracts, invoices, and/or receipts to purchase, implement or consultation services for the Enterprise Resource Planning (ERP) payroll system;" 2) informal report number 9194; 3) all payroll correction request forms submitted by named individuals during a specified time period; 4) all corrected pay stubs issued to named individuals during a specified time period; and 5) all e-mails or memorandums from or to named individuals during a specified time period and regarding the ERP payroll system.<sup>1</sup> You claim that the submitted information is excepted from

---

<sup>1</sup>We note the city received the instant request for information on December 21, 2010, but did not request this decision until February 7, 2011. You explain the city required the requestor to make a deposit for payment of anticipated costs under section 552.263 of the Government Code and received the cost deposit on January 19, 2011. *See* Gov't Code § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to Gov't Code § 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond). Based on your representations, we conclude the date of the city's receipt of this request was January 19, 2011. The city informs us it was closed on December 24 and 31, 2010 and February 1, 2, and 4, 2011, thus, the city complied with section 552.301 of the Government Code in requesting this decision. *See id.* § 552.301(a)-(b), (e).

disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

Initially, we note that you have only submitted a representative sample of e-mail communications between city staff members and a spreadsheet payroll deduction report. Thus, to the extent any information responsive to the remaining parts of the request 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).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the common-law right of privacy. The doctrine of common-law privacy 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 satisfied. *Id.* at 681-82. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). You claim that Exhibit D consists of records that are subject to common-law privacy. Upon review, we agree that portions of Exhibit D are highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must generally withhold the information you have marked in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that the remaining information you have marked discusses union membership dues in general, and does not implicate the privacy interests of any named individual. Thus, the information we have marked, is not confidential under common-law privacy, and the city may not withhold

---

<sup>2</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

it under section 552.101 on that ground. As no further exceptions to its disclosure have been made, the information we have marked in Exhibit D must be released.

Next, you claim Exhibit C is excepted under section 552.107(1) 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 C constitute communications between city attorneys and city officers that were made for the purpose of facilitating the rendition of professional legal services to the city. You state that these communications were made in confidence and have maintained their confidentiality. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to Exhibit C.

Accordingly, the city may withhold Exhibit C under section 552.107 of the Government Code.<sup>3</sup>

In summary, with the exception of the information we have marked for release, the city must withhold the information you have marked in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold Exhibit C under section 552.107 of the Government Code. The remaining information in Exhibit D 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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/tf

Ref: ID# 414664

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against the disclosure of Exhibit C.