



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 12, 2011

Mr. Frank J. Garza  
Davidson & Troilo  
7550 West IH-10 Suite 800  
San Antonio, Texas 78229-5815

OR2011-18256

Dear Mr. Garza:

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# 438469.

The City of Bulverde (the “city”), which you represent, received a request for records from a specified time period regarding invocations or prayers in city council meetings. You state some of the requested information is being released. You claim other responsive information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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. *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, orig. proceeding). 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 claim the attorney-client privilege under section 552.107(1) for the information submitted as Exhibit C. Having considered your representations and reviewed the information in Exhibit C, we find some of the information at issue also is included in Exhibit B, which you state is being released. Thus, we conclude the city has waived the attorney-client privilege with respect to the information it is releasing and may not withhold that information, which we have marked, under section 552.107(1). See TEX. R. EVID. 511; *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 554 (Tex. 1990) (attorney-client and work product privileges were waived when privileged information was disclosed to Federal Bureau of Investigation, Internal Revenue Service, and Wall Street Journal); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644, 649 (Tex.1986). We conclude the city may generally withhold the remaining information in Exhibit C, which we also have marked, under section 552.107(1). We note, however, that the marked e-mail strings contain communications with a non-privileged party. To the extent those communications, which we have marked, exist separate and apart from the e-mail strings, they may not be withheld under section 552.107(1).

We note the city may be required to withhold some of the submitted information under sections 552.117 and 552.137 of the Government Code.<sup>1</sup> Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees

---

<sup>1</sup>This office will raise sections 552.117 and 552.137 on behalf of a governmental body, as these sections are mandatory exceptions to disclosure. See Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See* Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). Section 552.117(a)(1) encompasses an official's or employee's personal cellular telephone or pager number if the official or employee pays for the telephone or pager service with his or her personal funds. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to Gov't Code § 552.117 not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request confidentiality under section 552.024. Thus, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code to the extent the city officials to whom the information pertains timely requested confidentiality for the marked information under section 552.024 of the Government Code, including the cellular telephone number if the official concerned personally pays for the cellular service.

Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners have affirmatively consented to the public disclosure of their e-mail addresses.<sup>2</sup>

In summary, the city (1) may withhold the information we have marked in Exhibit C under section 552.107(1) of the Government Code, but may not withhold the marked communications with the non-privileged party to the extent they exist separate and apart from the e-mail strings; (2) must withhold the information we have marked under section 552.117(a)(1) of the Government Code to the extent the city officials to whom the

---

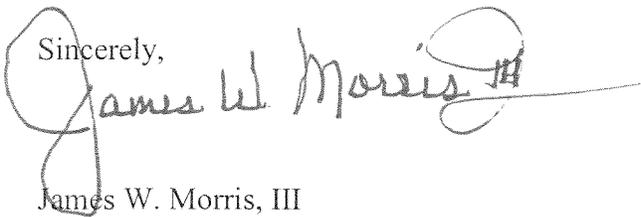
<sup>2</sup>We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.107(1) of the Government Code.

information pertains timely requested confidentiality for the marked information under section 552.024 of the Government Code, including the cellular telephone number if the official concerned personally pays for the cellular service; and (3) must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners have affirmatively consented to the public disclosure of their e-mail addresses. The rest of the information at issue 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 that reads "James W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

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

JWM/em

Ref: ID# 438469

Enc: Submitted documents

c: Requestor  
(w/o enclosures)