



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2012

Ms. Jessica Scott
For City of Rollingwood
Scanlan, Buckle & Young, P.C.
602 West 11th Street
Austin, Texas 78701-2099

OR2012-01605

Dear Ms. Scott:

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# 444357.

The City of Rollingwood (the "city") received a request on November 9, 2011 for (1) "all documents related to a complaint of abuse and neglect of an animal filed by" the requestor "with the Rollingwood Chief of Police on November 4, 2011;" (2) "all communications between and among the Rollingwood Chief of Police, Mayor of Rollingwood, Rollingwood City Council members, or Rollingwood City employees concerning" the specified complaint; (3) "all communications from members of the public sent to the Rollingwood Chief of Police, Mayor of Rollingwood, [or] Rollingwood City Council members relating" to the specified complaint; (4) "all documents regarding unrestrained animals belonging" to a named individual at a specified address "recorded for the past two years to include police reports;" and (5) "all documents regarding measures taken by the City of Rollingwood to enforce the city's ordinances relating to health, sanitation and junked vehicles for" a specified address "for the past five years." The city received a second request from the same requestor on November 9, 2011 for "any and all documents that show or reflect efforts to seek and provide medical care for dogs owned" by a named individual at a specified address. You state that some of the requested information was made available to the requestor on November 29, 2011. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note a portion of Exhibit C-4, which we have marked, was created after the date of the instant requests. The Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Additionally, you inform us the police calls included in the call sheets in Exhibit C-4 that are not for the specified address are not responsive to the instant requests for information. This ruling does not address the public availability of any information that is not responsive to the requests and the city is not required to release such information in response to this request.

You raise section 552.107(1) of the Government Code for Exhibit C-1. Section 552.107(1) 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 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). 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, no pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain 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 Exhibit C-1 contains communications made between an attorney representing the city and city officials, which were made for the purpose of facilitating professional legal services to city officials. We understand these communications were not intended to be disclosed to third parties and have remained confidential. Based on your representations and

our review, we find the city has demonstrated the applicability of the attorney-client privilege to the information in Exhibit C-1. Thus, the city may withhold this information under section 552.107(1) of the Government Code.

Section 552.137 of the Government Code 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 you have marked, in addition to the e-mail addresses we have marked, in Exhibit C-2 are not of a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses you and we have marked in Exhibit C-2 under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure.¹

Next, we address your claim under section 552.101 of the Government Code for portions of Exhibit C-2, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. The city, however, has not directed our attention to any law, nor are we aware of any law, that makes the information at issue confidential. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the city may not withhold the information you have marked in Exhibit C-2 under section 552.101 of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information in Exhibit C-3 and the notice letters dated April 20, 2010 in Exhibit C-4, and the associated information, relate to concluded investigations that did not result in a conviction or deferred adjudication. Based on your representations and our review of the information in Exhibits C-3 and C-4, we conclude section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d

¹We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold 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.

at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the information in Exhibit C-3 and the notice letters dated April 20, 2010 in Exhibit C-4, and the associated information, under section 552.108(a)(2) of the Government Code.

In summary, the city may withhold the information in Exhibit C-1 under section 552.107(1) of the Government Code. The city must withhold the e-mail addresses you and we have marked in Exhibit C-2 under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure. With the exception of basic information, the city may withhold the information in Exhibit C-3 and the notice letters dated April 20, 2010 in Exhibit C-4, and the associated information, under section 552.108(a)(2) of the Government Code. The remaining information 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, 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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 444357

Enc. Submitted documents

c: Requestor
(w/o enclosures)