



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2012

Ms. Jill Hoffman
Bojorquez Law Firm, PLLC
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

OR2012-04495

Dear Ms. Hoffman:

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# 448682.

The City of Granger and the Granger Police Department (collectively the "city"), which you represent, received a request for a copy of a named police officer's personnel file, a specified investigation file, all e-mails sent to or received by the chief of police (the "chief") pertaining to the named officer, all e-mails between the chief and the Taylor Police Department, and certain policies and regulations. You state the city is releasing some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the information in Exhibit B includes an I-9 form. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). In this instance, release of the submitted I-9 form would be “for purposes other than enforcement” of the referenced federal statutes. Accordingly, we conclude this information, which we have marked, is confidential pursuant to section 1324a of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code.

We note the information in Exhibit B also includes three F-5 Report of Separation of License Holder forms that are subject to section 1701.454 of the Occupations Code. Section 552.101 of the Government Code also encompasses section 1701.454. This section provides, in relevant part, “[a]ll information submitted to the [Texas Commission on Law Enforcement Officer Standards and Education] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.” Occ. Code § 1701.454(a). The records at issue are F-5 Report of Separation of License Holder forms. In this instance, the submitted information does not reflect the officer at issue was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the F-5 forms we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Gov’t Code § 552.107(1). 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 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 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 to only 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. Lastly, the attorney-client privilege applies to only 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 the information in Exhibit C constitutes a communication between a city attorney and a city employee in his capacity as a client that was made for the purpose of providing legal services to the city. We understand the communication was intended to be confidential and has remained confidential. Based on your representations and our review, we find the information in Exhibit C consists of a privileged attorney-client communication that the city may withhold under section 552.107(1) of the Government Code.²

We note the remaining information in Exhibit B includes information subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). We find the city must withhold the information we have marked in Exhibit B under section 552.130 of the Government Code.

We note Exhibit B contains an e-mail address of a member of the public. 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). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail address we have marked is not of a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail address we have marked in Exhibit B under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release.

In summary, the city: (1) must withhold the I-9 form and attachments we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (2) must withhold the F-5 forms we have marked in

²As our ruling is dispositive, we need not address your remaining argument for Exhibit C.

Exhibit B under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (3) may withhold the information in Exhibit C under section 552.107(1) of the Government Code; (4) must withhold the information we have marked in Exhibit B under section 552.130 of the Government Code; and (5) must withhold the e-mail address we have marked in Exhibit B under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release.³ The city must release the remaining information.⁴

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision, including: a Form I-9 and attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; and an e-mail address of a member of the public under section 552.137 of the Government Code.

⁴We note that the remaining information contains a social security number that does not belong to the requestor's client. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). The requestor has a right, however, to his client's social security number in the information being released. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). We also note the requestor has a right of access to some of the information being released in Exhibit B, which is confidential with respect to the general public. *See id.* As such, if the city receives another request for this information from an individual other than this requestor or his client, the city must again seek a ruling from this office.

Ref: ID# 448682

Enc. Submitted documents

c: Requestor
(w/o enclosures)