



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2012

Mr. Jason D. King
Akers & Boulware-Wells, LLP
6618 Sitio Del Rio Boulevard, Building E, Suite 102
Austin, Texas 78730

OR2012-04867

Dear Mr. King:

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# 449744.

The City of Balch Springs (the "city"), which you represent, received eight requests from the same requestor for eight categories of information from specified time periods, including (1) correspondence involving the mayor, the city manager, or the economic development director and Dallas County Water Control and Improvement District No. 6 ("WCID No. 6"); (2) agendas and minutes of city council meetings involving WCID No. 6; (3) other records of regular city council meetings; (4) records related to code enforcement violations; (5) the current city ordinance pertaining to amusement centers and eight-liners and any proposals pertaining to the ordinance; and (6) information related to accidents involving city vehicles. You claim the submitted 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.

We first note the submitted information consists exclusively of communications involving city officials, attorneys for the city, and attorneys for the Texas Municipal League ("TML"). We therefore assume the city has released any other information responsive to the present requests for information that existed when the city received the requests. If not, then the city must release any such information immediately.¹ See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Next, we address your claim for the submitted information under section 552.107 of the Government Code. 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). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact 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).

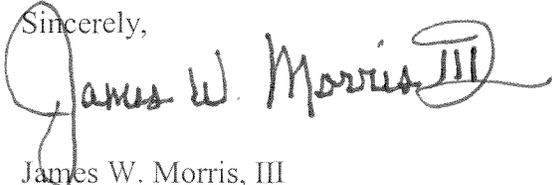
You contend the submitted information consists of communications between attorneys for and representatives of the city that were made for the purpose of facilitating the rendition of professional legal services to the city. You state these communications were intended to be and remain confidential. Based on your representations and our review of the information at issue, we conclude the city may generally withhold the information we have marked under section 552.107(1) of the Government Code. We note, however, that one of the marked e-mail strings contains a communication with an attorney employed by TML. According to TML’s website, its attorneys only provide general legal advice and do not actually represent member cities. Thus, we conclude you have not demonstrated the communication with TML and the attachment to the communication, which we have marked, are protected by the attorney-client privilege. Therefore, the marked communication with TML and the attachment to the communication may not be withheld under section 552.107(1) of the

Government Code and must be released to the requestor if they exist separate and apart from the e-mail string in which they appear. We likewise conclude the rest of the submitted information, which consists of communications with attorneys for TML, is not protected by the attorney-client privilege and may not be withheld under section 552.107(1). As the city claims no other exception for that information, it must be released to the requestor.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, stylized initial "J".

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

JWM/em

Ref: ID# 449744

Enc: Submitted documents

c: Requestor
(w/o enclosures)