



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2012

Ms. Donna Johnson
Olson & Olson LLP
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019-2133

OR2012-05892

Dear Ms. Johnson:

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# 451921 (ALV - Pack).

The City of Alvin (the "city"), which you represent, received a request for animal control intake records since December 8, 2011 concerning a specified cat; animal control disposition records since December 8, 2011 concerning the specified cat; records showing the number of animals held by animal control on November 14, 2011 or during the week of November 14, 2011; all documents created or updated since December 8, 2011 concerning an investigation of city animal control and a specified officer; and all documents created or updated since December 8, 2011 regarding the overall investigation into the city animal control procedures, personnel, and policies. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.102, 552.107, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information was created before the date specified in the request. Such information, which we have marked, is not responsive to the present request for information. This decision does not address the public availability of

non-responsive information and such information need not be released in response to the present request.

Section 552.107(1) of the Government Code protects information coming 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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (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 the submitted information consists of communications between city staff and the city attorney. You state these communications were made to facilitate the rendition of professional legal services to the city. You identify the parties to the communications and state the communications were not intended to be disclosed to third parties. Based on your representations and our review, we conclude you have established the communications we have marked are protected by the attorney-client privilege. Accordingly, the city may withhold the information we have marked under section 552.107(1) of the Government Code.¹ We note one attachment to an otherwise privileged e-mail includes a communication with a non-privileged party. If this communication, which we have marked, exists separate and apart from the privileged e-mail string in which it appears, the city may not withhold it under section 552.107(1) of the Government Code.

¹As our ruling with regard to this information is dispositive, we do not address your argument against disclosure of this information under section 552.111 of the Government Code.

Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 of the Government Code or section 552.1175 of the Government Code.² Gov't Code § 552.117(a)(2). Accordingly, the city must withhold the information we have marked under section 552.117(a)(2).³

Section 552.137 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).⁴ *Id.* § 552.137(a)-(c). The remaining information contains an e-mail address of a member of the public. Accordingly, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code unless the owner consents to its release.⁵

In summary, the city may withhold the information we have marked under section 552.107(1) of the Government Code. However, to the extent the marked non-privileged communication exists separate and apart from the otherwise privileged e-mail string to which it is attached, it may not be withheld under section 552.107(1) of the Government Code. The city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The city must withhold the information we have marked under section 552.137 of the Government Code unless the owner of the e-mail address consents to its release. The remaining responsive 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,

²“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

³As our ruling with regard to this information is dispositive, we do not address your remaining argument against its disclosure under section 552.102 of the Government Code.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵As our ruling with regard to this information is dispositive, we do not address your remaining argument against its disclosure under section 552.102 of the Government Code.

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 cursive script that reads "Jessica Marsh".

Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 451921

Enc. Submitted documents

c: Requestor
(w/o enclosures)