



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
Office of the City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77002

OR2012-06767

Dear Ms. Evans:

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# 451333 (GC No. 19302).

The City of Houston (the "city") received a request for copies of any final settlement agreements between the city and AquaTexas Inc. ("AquaTexas"), from January 1, 2009 to the present, and copies of any correspondence between the city and AquaTexas Inc., from June 1, 2011 through August 30, 2011.¹ You claim some of the submitted records are excepted from disclosure under section 552.107 of the Government Code. You also state release of some of the responsive information may implicate the interests of AquaTexas. Accordingly, you provide documentation showing you notified AquaTexas of the request and its right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have considered the claimed exception and reviewed the responsive information.

¹AquaTexas informs us it does not object to the release of the final settlement agreement between the city and AquaTexas. Because the city has not submitted a final settlement agreement for our review, we assume it has been released. If not, the city must do so now to the extent such an agreement existed as of the date the request was received. *See* Gov't Code §§ 552.301, .302.

The requestor subsequently narrowed his request to exclude the emergency preparedness plan from his request. Thus, the information submitted as Exhibits 2B and 4 is not responsive to this request for information and need not be released. Accordingly, because AquaTexas seeks to withhold only the information contained in Exhibits 2B and 4, we need not address any of AquaTexas's arguments against disclosure.

We turn now to the city's arguments for the remaining submitted information. 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). 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 Texas 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 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, 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).

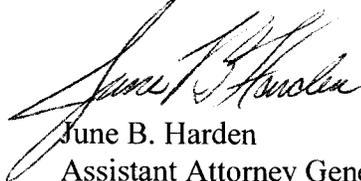
You state the responsive information consists of confidential communications between and among city attorneys and other city employees made for the purpose of rendering legal services to the city. However, upon review, the responsive communications were either shared with non-privileged parties or do not consist of communications made in the furtherance of the rendition of legal services. Thus, the city has not demonstrated the applicability of the attorney-client privilege, and none of the responsive information may be

withheld under section 552.107. As no other exceptions to disclosure are asserted, the 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, 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/bhf

Ref: ID# 451333

Enc. Submitted documents

c: Requestor
(w/o enclosures)