



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2012

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79408-2000

OR2012-06806

Dear Ms. Sims:

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# 453172.

The City of Lubbock (the "city") received a request for any documents generated within the past year regarding street vending in the city. You claim the submitted information is exempted from disclosure under sections 552.107 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of Exhibit C, which we have marked, are not responsive to the instant request because they were created outside of the last year. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

You raise section 552.107 of the Government Code for the information submitted in Exhibit C. Section 552.107(1) 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

¹Although you raised sections 552.101 and 552.111 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we assume you have withdrawn these exceptions. See Gov't Code §§ 552.301, .302.

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 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 information in Exhibit C consists of confidential communications made in furtherance of professional legal services rendered to the city. You state these communications were exchanged between the city attorneys and city employees and council members and contain the city attorneys’ legal advice and strategies. You further state these communications were intended to be confidential and that the confidentiality has been maintained. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information in Exhibit C, and it may generally be withheld under section 552.107 of the Government Code. However, we note some of the individual e-mails contained in otherwise privileged e-mail strings are communications with persons you have not shown to be privileged parties, and these e-mails are separately responsive to the request. Thus, to the extent these non-privileged e-mails, which we have marked, exist separate and apart from the otherwise privileged e-mail strings, they may not be withheld under section 552.107(1), and must be released.

Next you raise section 552.137 of the Government Code for portions of the information submitted in Exhibit D. 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 owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See Gov’t Code* § 552.137(a)-(c). Section 552.137 is not applicable to the work e-mail address of an employee of a governmental body because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government

employee. The city must withhold the e-mail addresses you have marked, in addition to the e-mail address we have marked, under section 552.137 of the Government Code unless the owners affirmatively consents to their public disclosure.²

In summary, the city may withhold the information submitted in Exhibit C under section 552.107(1) of the Government Code. However, to the extent the marked non-privileged e-mails exist separate and apart from the otherwise privileged e-mail strings, they may not be withheld under section 552.107(1) of the Government Code, but instead must be released. The city must withhold the e-mail addresses you have marked, in addition to the email address we have marked, under section 552.137 of the Government Code unless the owners affirmatively consent to their public disclosure. 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/dls

Ref: ID# 453172

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We 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 opinion.