



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 18, 2012

Mr. Brent A. Money  
Counsel for the City of Greenville  
Scott, Money, Ray & Thomas, PLLC  
P.O. Box 1353  
Greenville, TX 75403-1353

OR2012-09368

Dear Mr. Money:

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# 456604.

The City of Greenville (the "city"), which you represent, received a request for three categories of information pertaining to a named city councilman during a specified period of time. You state some of the requested information has been released. You claim some of the requested information is not subject to the Act. Additionally, you claim that the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code and privileged under Texas Rule of Evidence Rule 503 and Texas Rule of Civil Procedure 192.5.<sup>1</sup> We have considered your arguments and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request for information because it does not relate to the named city

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with rule 408 of the Texas Rules of Evidence, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

<sup>2</sup>We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

councilman. This decision does not address the public availability of the non-responsive information and such information need not be released in response to the present request.

You contend that a portion of the responsive information is not subject to the Act. The Act is applicable only to "public information." See Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as consisting of

~~information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:~~

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

*Id.* § 552.002(a). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.* § 552.002(a)(1); see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); see Open Records Decision No. 462 at 4 (1987). Moreover, section 552.001 of the Act provides it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. See Gov't Code § 552.001(a).

We further note the characterization of information as "public information" under the Act is not dependent on whether the requested records are in the possession of an individual or whether a governmental body has a particular policy or procedure that establishes a governmental body's access to the information. See Open Records Decision No. 635 at 3-4 (1995) (finding information does not fall outside definition of "public information" in Act merely because individual member of governmental body possesses information rather than governmental body as whole); see also Open Records Decision No. 425 (1985) (concluding, among other things, information sent to individual school trustees' homes was public information because it related to official business of governmental body) (overruled on other grounds by Open Records Decision No. 439 (1986)). Furthermore, this office has found that information in a public official's personal e-mail account and home telephone records may be subject to the Act where the public official uses the personal e-mail account and home telephone records to conduct public business. See ORD 635 at 6-12 (appointment calendar owned by a public official or employee is subject to the Act when it is maintained by another public employee and used for public business).

You state a portion of the responsive information consists of personal e-mails located in the named city councilman's personal e-mail account. You further state these personal e-mails are between the named city councilman and an employee for L-3 Communications Integrated

Systems, L.P. (“L-3”). You assert these personal e-mails are “not related to city business,” but instead pertained to medical and personal family issues. You also indicate these communications were not collected, assembled, or maintained pursuant to any law or ordinance or in connection with the transaction of official business. However, you also state that these personal e-mails sometimes pertained to city council meetings and business with L-3, with whom the city conducts business. We reiterate that information is within the scope of the Act if it relates to the official business of a governmental body and is maintained by a public official or employee of the governmental body. *See Gov’t Code § 552.002(a)*. A governmental body may not circumvent the applicability of the Act by conducting official public business in a private medium. *See ORDs 635 at 12, 425 at 2*. Thus, to the extent the personal e-mails located in the named city councilman’s personal e-mail account relate to the official business of the city, they are subject to the Act, and must be released unless they are excepted from disclosure. To the extent the personal e-mails do not relate to the official business of the city, they are not subject to the Act and need not be released.

To the extent the personal e-mails located in the named city councilman’s personal e-mail account relate to the official business of the city, we note that, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov’t Code § 552.301(e)*. You inform us that the city received this request on March 26, 2012. However, as of the date of this letter, you have not submitted to this office a copy or representative sample of the personal e-mails requested. Consequently, we find the city has failed to comply with the procedural requirements of section 552.301 with respect to the e-mails at issue.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). As you raise no exceptions for the personal e-mails, to the extent the requested personal e-mails relate to the official business of the city, the city must release the personal e-mails pursuant to section 552.302 of the Government Code.

Next, we note the responsive information contains agendas and minutes of public meetings of the city. The agendas and minutes of a governmental body’s public meetings are

specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See id.* §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). You seek to withhold this information under sections 552.103 and 552.107. As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the submitted agendas and minutes of the public meetings, which we have marked, must be released pursuant to section 551.022 of the Government Code.

We also note that the remaining responsive information contains city ordinances, which we have marked. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision No. 221 at 1 (1979) ("official records of the public proceedings of a governmental body are among the most open of records"); *see also* Open Records Decision No. 551 at 2-3 (1990) (laws or ordinances are open records). Accordingly, the city must release the submitted ordinances.

Next, we note portions of the remaining responsive information are subject to section 552.022 of the Government Code, which provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(3), (16). We note portions of the remaining responsive information, which we have marked, consist of information in an account related to the expenditure of city funds and attorney fee bills that are subject to section 552.022 of the Government Code. Although you seek to withhold this information under sections 552.103 and 552.107(1) of the Government Code, those sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See id.*

§ 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally) 663 at 5 (1999). As such, sections 552.103 and 552.107 do not make information confidential for the purposes of section 552.022. Therefore, the city may not withhold any of the information subject to 552.022 under section 552.103 or section 552.107 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence and the Texas Rules of Civil Procedure are “other law” within the meaning of section 552.022. See *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider whether the city may withhold the information subject to section 552.022 under Texas Rule of Evidence 503 and rule 192.5 of the Texas Rules of Civil Procedure. Additionally, because section 552.136 of the Government Code makes information confidential under the Act, we will address the applicability of this exception to the information subject to section 552.022.<sup>3</sup> We will also address your arguments under sections 552.103 and 552.107 for the remaining responsive information not subject to section 552.022 of the Government Code.

We first address your arguments for the responsive information that is subject to section 552.022. Texas Rule of Evidence 503 enacts the attorney-client privilege, providing in relevant part:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

- (A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;
- (B) between the lawyer and the lawyer's representative;
- (C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;
- (D) between representatives of the client or between the client and a representative of the client; or
- (E) among lawyers and their representatives representing the same client.

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

TEX. R. EVID. 503(b)(1). A communication is “confidential” if 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).

Thus, in order to withhold information from disclosure under rule 503, a governmental body must: (1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding).

The city claims the submitted attorney fee bills are privileged in their entirety under rule 503. However, section 552.022(a)(16) of the Government Code provides that information “that is *in* a bill for attorney’s fees” is not excepted from required disclosure unless it is confidential under “other law” or privileged under the attorney-client privilege. *See* Gov’t Code § 552.022(a)(16) (emphasis added). This provision, by its express language, does not permit the entirety of an attorney fee bill to be withheld. *See* Open Records Decision Nos. 676 (attorney fee bill cannot be withheld in entirety on basis it contains or is attorney-client communication pursuant to language in section 552.022(a)(16)), 589 (1991) (information in attorney fee bill excepted only to extent information reveals client confidences or attorney’s legal advice).

You generally assert the information subject to section 552.022 consists of confidential communications by attorneys for the city or their representatives to the city. We understand these communications were made for the purpose of facilitating the rendition of professional legal services to the city. You indicate that the information at issue was intended to be, and has remained, confidential. Based on your representations and our review, we conclude the information we have marked may be withheld under rule 503. We note, however, you have failed to identify some of the parties to these communications. *See* Open Records Decision No. 676 at 8 (2002) (governmental body must inform this office of identities and capacities of individuals to whom each communication at issue has been made; this office cannot necessarily assume that communication was made only among categories of individuals identified in rule 503). Further, some of the remaining information at issue does not reveal the content of a communication or is a communication with a non-privileged party. Thus, we find you have failed to demonstrate any of the remaining information at issue documents privileged attorney-client communications. Accordingly, this information is not privileged under rule 503 and may not be withheld on this basis.

Next, we address your argument under Texas Rule of Civil Procedure 192.5. Rule 192.5 encompasses the attorney work product privilege. For purposes of section 552.022 of the

Government Code, information is confidential under rule 192.5 only to the extent the information implicates the core work product aspect of the work product privilege. *See* Open Records Decision No. 677 at 9–10 (2002). Rule 192.5 defines core work product as the work product of an attorney or an attorney’s representative, developed in anticipation of litigation or for trial, that contains the mental impressions, opinions, conclusions, or legal theories of the attorney or the attorney’s representative. *See* TEX. R. CIV. P. 192.5(a), (b)(1). Accordingly, in order to withhold attorney core work product from disclosure under rule 192.5, a governmental body must demonstrate the material was (1) created for trial or in anticipation of litigation and (2) consists of the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney’s representative. *Id.*

The first prong of the work product test, which requires a governmental body to show the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate (1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and (2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *See Nat’l Tank v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A “substantial chance” of litigation does not mean a statistical probability, but rather “that litigation is more than merely an abstract possibility or unwarranted fear.” *Id.* at 204. The second part of the work product test requires the governmental body to show that the materials at issue contain the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney’s representative. *See* TEX. R. CIV. P. 192.5(b)(1). A document containing core work product information that meets both parts of the work product test is confidential under rule 192.5, provided the information does not fall within the scope of the exceptions to the privilege enumerated in rule 192.5(c). *See Pittsburgh Corning Corp.*, 861 S.W.2d at 427.

In this instance, we find you have failed to demonstrate that any of the remaining information subject to section 552.022 consists of mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney’s representative created for trial or in anticipation of litigation. Therefore, we conclude the city may not withhold any portion of the information at issue under Texas Rule of Civil Procedure 192.5.

We note some of the information subject to section 552.022 of the Government Code contains information subject to section 552.136 of the Government Code. Section 552.136 provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Accordingly, the city must withhold the information we have

marked in the information subject to section 552.022 under section 552.136 of the Government Code.

We will now address the remaining responsive information that is not subject to section 552.022. You assert the information at issue is excepted from disclosure under section 552.103 of the Government Code, which provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

*Id.* § 552.103(a), (c). The city has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date of the receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You claim the remaining responsive information not subject to section 552.022 pertains to pending litigation. You inform us, and have provided documentation showing, two separate lawsuits styled *L-3 Communications Integrated Systems, L.P. v. City of Greenville, Texas, et al.*, Cause No. 76-399, filed in the 354<sup>th</sup> Judicial District Court of Hunt County; and *L-3 Communications Integrated Systems, L.P. v. City of Greenville, Texas, et al.*, Cause No. 3:11-cv-02294-P, filed in Federal District Court in the Northern District of Texas, Dallas Division are pending against the city. Based on your representations and our review, we determine the litigation was pending on the date the city received the request for information, and that the city is a party to the litigation. You state the information at issue relates to issues raised in the pending litigation. Based on your representations and our review, we find the remaining responsive information not subject to section 552.022 is related to the pending litigation for the purposes of section 552.103. Accordingly, the city may generally withhold the remaining responsive information not subject to section 552.022 under section 552.103 of the Government Code.

We note, however, it appears the opposing party in the pending litigation has seen or had access to portions of the information at issue. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures. *See* ORD 551 at 4-5 (1990). Thus, if the opposing party in pending litigation has seen or had access to information that is related to the litigation, whether through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Accordingly, any of the submitted information that has been seen or accessed by the opposing party to the litigation may not be withheld under section 552.103. However, information that has not been seen by the opposing party may be withheld under section 552.103 of the Government Code. We note the applicability of section 552.103 ends once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Therefore, with the exception of any information the opposing party to the litigation has seen or had access to, the city may withhold the remaining responsive information not subject to section 552.022 under section 552.103 of the Government Code. We will address your remaining arguments under sections 552.107 and 552.111, as well as the applicability of section 552.137 of the Government Code, for the information the opposing party has seen or had access to.<sup>4</sup>

Section 552.107(1) of the Government Code 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 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, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *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.

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

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 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 claim section 552.107(1) of the Government Code for the remaining information. You state the information at issue consists of communications involving the city’s attorneys and their representatives. However, as previously noted, the information at issue consists of communications between the city and the opposing party to the litigation, a non-privileged party. Thus, we find you have failed to demonstrate the applicability of the attorney-client privilege to the remaining information, and the city may not withhold that information under section 552.107(1) of the Government Code.

You also claim the remaining information is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. Section 552.111 encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); ORD 677 at 4-8. Rule 192.5 defines work product as

(1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or

(2) a communication made in anticipation of litigation or for trial between a party and the party’s representatives or among a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

TEX. R. CIV. P. 192.5. A governmental body seeking to withhold information under this exception bears the burden of demonstrating the information was created or developed for trial or in anticipation of litigation by or for a party or a party’s representative. TEX. R. CIV. P. 192.5; ORD 677 at 6-8. In order for this office to conclude the information was made or developed in anticipation of litigation, we must be satisfied

(a) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.

*Nat'l Tank Co. v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A “substantial chance” of litigation does not mean a statistical probability, but rather “that litigation is more than merely an abstract possibility or unwarranted fear.” *Id.* at 204; ORD 677 at 7.

You claim the remaining information discloses attorney work product. However, as previously noted, the remaining information consists of communications with the opposing party to the anticipated litigation, a non-privileged party. Because this information has been communicated with a non-privileged party, we find the city has failed to demonstrate the applicability of the work product privilege to the information at issue. Accordingly, the city may not withhold any of the remaining information under the work product privilege of section 552.111 of the Government Code.

A portion of the remaining information may be subject to section 552.137 of the Government Code. 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). Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

In summary, to the extent the personal e-mails located in the named city councilman’s personal e-mail account relate to the official business of the city, they are subject to the Act, and they must be released. To the extent the personal e-mails do not relate to the official business of the city, they are not subject to the Act and need not be released. The city must release the submitted agendas and minutes of the public meetings and city ordinances we have marked. The city may withhold the information we have marked in the information subject to section 552.022 under Texas Rule of Evidence 503. The city must withhold the information we have marked in the information subject to section 552.022 under section 552.136 of the Government Code. With the exception of any information the opposing party to the litigation has seen or had access to, the city may withhold the remaining responsive information not subject to section 552.022 under section 552.103 of the Government Code. In releasing the information the opposing party to the pending litigation has seen or had access to, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. The remaining responsive information subject to section 552.022 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](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 "Sean Opperman". The signature is written in a cursive, flowing style.

Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/som

Ref: ID# 456604

Enc. Submitted documents

c: Requestor  
(w/o enclosures)