



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2012

Mr. Andrew Culpepper
Assistant City Attorney
City of Orange
P.O. Box 189
Orange, Texas 77631

OR2012-11308

Dear Mr. Culpepper:

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# 459646.

The City of Orange (the "city") received a request for information pertaining to a specified company during a specified time period. You state some information has been released. You claim the submitted information is excepted from disclosure under sections 552.107, 552.111, and 552.131 of the Government Code.¹ We have considered the claimed exceptions and reviewed the 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 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.

¹While you also raised sections 552.101 and 552.103 of the Government Code in your initial letter dated May 14, 2012, you have not presented arguments explaining how these exceptions apply to the submitted information, as required by section 552.301. Thus, we assume you have withdrawn these claims. See Gov't Code §§ 552.301(e)(1)(A), .302.

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 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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). 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.*, 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 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 you have marked consists of communications between individuals you have identified as city officials, employees, and attorneys. You state the communications were made for the purpose of facilitating the rendition of legal services, and were intended to be, and have remained, confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information you have marked. Accordingly, the city may withhold the marked information under section 552.107(1) of the Government Code.

You raise subsection 552.131(b) of the Government Code for most of the remaining information. Section 552.131 provides, in relevant part:

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code 552.131(b). Section 552.131(b) of the Government Code protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. You assert the information you have marked relates to the economic development renegotiations between the city and a business prospect

regarding potential financial incentives. You state the current contract expires at the end of this year, and a renewal contract has not been agreed to. Upon review, we agree the information you have marked consists of information about financial or other incentives being offered to a business prospect by the city. Accordingly, the city may withhold the marked information under section 552.131(b).²

In summary, the city may withhold the information you marked under sections 552.107(1) and 552.131(b) of the Government Code. 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 459646

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because our ruling is dispositive, we do not address your remaining argument against disclosure.