



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 26, 2012

Mr. Joe Gorfida, Jr.  
Counsel for the City of Richardson  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
500 North Akard Street  
Dallas, Texas 75201

OR2012-15369

Dear Mr. Gorfida:

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# 468856.

The City of Richardson (the "city"), which you represent, received a request for all documents pertaining to the acquisition of a specified property. You state the city has released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us some of the submitted information, which you have marked, is not responsive to the instant request because it does not pertain to the acquisition of the specified property. The city need not release non-responsive information in response to this request, and this ruling will not address that 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). 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 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).

The city states some of the responsive information consists of communications between city attorneys and employees that were made in connection with the rendition of professional legal services to the city. Furthermore, the city states these communications were intended to be confidential, and the confidentiality of the communications has been maintained. Upon review, we find the city may withhold this information, which you have marked, under section 552.107 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).<sup>1</sup> Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to an e-mail address provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor’s agent. *See id.* § 552.137(c)(1). Because we are unable to discern whether the e-mail addresses we have marked fall within the scope of section 552.137(c), we must rule conditionally. To the extent the marked e-mail addresses belong to members of the public, the city must withhold the e-mail addresses under section 552.137, unless the individuals to

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<sup>1</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).*

whom the e-mail addresses belong affirmatively consent to their release.<sup>2</sup> *See id.* § 552.137(b). However, to the extent the marked e-mail addresses belong to individuals or agents of companies with contractual relationships with the city, the e-mail addresses may not be withheld under section 552.137 of the Government Code.

In summary, the city may withhold the information you have marked under section 552.107 of the Government Code. To the extent the e-mail addresses we have marked belong to members of the public, the city must withhold the e-mail addresses under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. The city must release the remaining responsive information.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bhf

Ref: ID# 468856

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain 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 decision.