



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2013

Ms. Andrea D. Russell
For City of Richland Hills
Taylor, Olson, Adkins, Sralla, Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2013-06437

Dear Ms. Russell:

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# 484638.

The City of Richland Hills (the "city"), which you represent, received a request for correspondence, reports, or minutes regarding the city's red light camera program during a specified time period. You inform us you will redact information pursuant to Open Records Decision No. 684 (2009)¹ and social security numbers pursuant to section 552.147(b) of the Government Code.² You claim 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.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. Gov't Code § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to

¹This office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision. ORD 684.

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

demonstrate the elements of the privilege in order to withhold the information at issue. See ORD 676 at 6-7. 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, and 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). 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. 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 state the submitted e-mails and draft documents consist of confidential communications made in furtherance of professional legal services rendered to the city. You state these communications were exchanged between the city’s attorneys or representatives and city employees or representatives. You state these communications were intended to be confidential and that the confidentiality has been maintained. We note one of the e-mails you seek to withhold was communicated with a representative of the city of Haltom City. You state this individual is also a client of the city’s law firm. Upon review, we find you have failed to demonstrate how the representative of Haltom City and the city share a common legal interest that would allow the attorney-client privilege to apply to this communication. See TEX. R. EVID. 503(b)(1)(c); *In re Monsanto*, 998 S.W.2d 917, 922 (Tex. App.—Waco 1999, orig. proceeding) (discussing the “joint-defense” privilege incorporated by rule 503(b)(1)(C)). Accordingly, the city may not withhold this e-mail on

the basis of section 552.107(1) of the Government Code. However, based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the remaining information. Accordingly, with the exception of the e-mail we have marked for release, the city may withhold the submitted information under section 552.107(1) of the Government Code.

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 484638

Enc. Submitted documents

c: Requestor
(w/o enclosures)