



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 12, 2014

Ms. Amy L. Sims  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2014-04182

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# 515043.

The City of Lubbock (the "city") received a request for (1) financial documents for all accounts pertaining to the North & East Lubbock Community Development Corporation (the "NELCDC") and its subsidiaries for a specified time period; (2) information related to a named individual; and (3) e-mails between two named individuals during a specified time period. You state the city does not possess documents responsive to categories 1 and 2 or a portion of category 3 of the instant request.<sup>1</sup> Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of the NELCDC. Accordingly, you state, and provide documentation showing, you notified the NELCDC of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code* § 552.304 (interested party may submit written comments regarding availability of requested information). We have received comments from the

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

NELCDC. We have also received and considered comments from the requestor. *See id.* We have considered the submitted arguments and reviewed the submitted information.

The NELCDC asserts it is not a governmental body and, thus, the submitted information is not subject to the Act. The Act is applicable to “public information.” *See id.* § 552.021. Section 552.002(a) defines “public information” as

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

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

*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.*; *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). We note the submitted information is in the possession of the city, which is a governmental body as defined by section 552.003 of the Government Code. However, the NELCDC contends the requested information constitutes records of the NELCDC. The NELCDC informs us it has entered into a Grant Management Agreement (the “agreement”) with the city to provide services to the city, including undertaking housing development and community economic development. We note the agreement provides the NELCDC must appoint a city employee as executive director to provide oversight and assistance to the NELCDC in performing the agreement. Further, in Open Records Letter No. 2014-04140 (2014), this office concluded the NELCDC falls within the definition of a “governmental body” under section 552.003(1)(A)(xii) of the Government Code to the extent it is supported by city funds and any records relating to those parts of NELCDC’s operations that are directly supported by public funds are subject to the disclosure requirements of the Act. Upon review, we conclude portions of the submitted information pertain to the parts of the NELCDC that are directly supported by city funds, and

for which a city employee is providing oversight and assistance as the executive director. Thus, we find this information pertains to the transaction of official city business and is subject to the Act. Therefore, this information must be released, unless it is demonstrated that it falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302. However, we find the remaining information, which we marked, relates to the NELCDC operations that are directly supported by private funds. These records do not constitute "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the city. *See id.* § 552.002; *see also* Open Records Decision No. 635 (1995). Therefore, the information we marked is not subject to the Act and need not be released in response to this request.<sup>2</sup> We will consider the NELCDC's remaining arguments against disclosure of the information that is subject to the Act.

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). 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

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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).

The NELCDC states some of the submitted information consists of confidential communications between attorneys for the NELCDC and the executive director of the NELCDC. As noted above, the information at issue is in the possession of the city because the city employee serves as the NELCDC's executive director. The NELCDC further states these communications were made in furtherance of the rendition of professional legal services to the NELCDC. The NELCDC also asserts the communications were intended to be confidential and their confidentiality has been maintained. After reviewing the NELCDC's arguments and the submitted information, we agree a portion of this information constitutes privileged attorney-client communications. Thus, the city may withhold this information, which we marked, under section 552.107(1) of the Government Code on behalf of the NELCDC. However, we find the NELCDC has failed to identify all of the parties included on the remaining e-mails; therefore, the NELCDC has failed to demonstrate how the remaining information constitutes confidential communications between and among privileged parties. Thus, the city may not withhold the remaining information under section 552.107 of the Government Code on behalf of the NELCDC.

We understand the NELCDC to raise section 552.137 of the Government Code. 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 member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the city must withhold the submitted e-mail addresses under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies.

In summary, the city may withhold the information we marked under section 552.107(1) of the Government Code. The city must withhold the submitted e-mail addresses under section 552.137, unless their owners affirmatively consent to their public disclosure of subsection (c) applies. 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 515043

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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