



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2014

Ms. Enid M. Howard
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2014-09369

Dear Ms. Howard:

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# 524684 (COSA File No. W025681-031914).

The City of San Antonio (the "city") received a request for all records pertaining to the city's acquisition of a specified attorney for contract negotiations between the city and the San Antonio Police Officer's Association, including any contracts with, or payments made to, the specified attorney. You state you will provide the requestor with some information. You claim the remaining responsive information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note that some of the information you have submitted in Exhibit 2 is not responsive to the request at issue. The requestor seeks information related the city's acquisition of a specified attorney to conduct contract negotiations for the city. Some of the information you have submitted consists of a meeting agenda for the San Antonio City

¹We assume the "representative sample" of records 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 that those records contain substantially different types of information than that submitted to this office.

Council, no portion of which addresses matters pertinent to the instant request. Thus, this information is not responsive to the request. This ruling does not address the public availability of that information, and the city need not release any non-responsive 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. 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. 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). 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, this office must be informed 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, 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).

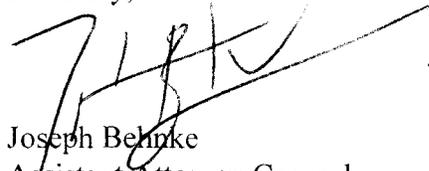
The city argues the information at issue consists of confidential communications between counsel for the city, its employees, and outside counsel. The city states the communications were made in furtherance of the rendition of professional legal services. The city also states the communications were intended to be confidential and their confidentiality has been maintained. Upon review, we find the attorney-client privilege is applicable to Exhibits 2, 5, and 6. Accordingly, these exhibits may be withheld under section 552.107(1) of the Government Code. However, the remaining communications in Exhibits 3 and 4 were sent

to or received from a third-party who was neither employed by, nor in a contractual relationship with, the city at the time the communications were made, and whom you have not demonstrated is privileged. Therefore, we find that these communications, which we have marked for release, do not constitute privileged attorney-client communications and may not be withheld under section 552.107(1) of the Government Code. As you raise no further arguments against disclosure, the information in Exhibits 3 and 4 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, 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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 524684

Enc. Submitted documents

c: Requestor
(w/o enclosures)