



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2014

Mr. Jeffrey Tippens
Counsel for City of Rollingwood
Scanlan, Buckle & Young, P.C.
602 West 11th Street
Austin, Texas 78701-2099

OR2014-11717

Dear Mr. Tippens:

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# 528485.

The City of Rollingwood (the "city"), which you represent, received a request for written legal opinions provided to the city council pertaining to the city's water system. You state the city released some information to the requestor. Further, you state the city will withhold e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us the city requested clarification of a portion of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You inform us the city has not received a response to its request for clarification. Accordingly, the city has no obligation at this time to release any information that might be responsive to this portion of the request. However,

¹Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain 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.

if the city receives clarification and wishes to withhold any of the information encompassed by the clarified request, the city must request another decision from this office at that time. *See id.* §§ 552.301, .302; *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 386 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See Gov't Code* § 552.107(1). 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 at issue constitutes or documents a communication. *Id.* at 7. Second, the governmental body must demonstrate the communication was 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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *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, 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 the communication has been maintained. Section 552.107(1) generally excepts an entire communication that a governmental body has demonstrated as being 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) (attorney-client privilege extends to entire communication, including facts contained therein).

You claim the submitted information consists of communications between counsel for the city and city officials, employees, and representatives in their capacity as clients that were made for the purpose of providing legal services to the city. You further state these

communications were intended to be confidential and have remained confidential. Based on these representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the submitted information. Therefore, the city may withhold the submitted information under section 552.107(1) of the Government Code.²

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,



Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/akg

Ref: ID# 528485

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.