ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2014

Ms. Barbara L. Quirk
Counsel for the City of Alpine
McKamie Krueger, LLP
941 Proton
San Antonio, Texas 78258

OR2014-14845

Dear Ms. Quirk:

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# 533578.

The City of Alpine (the "city"), which you represent, received a request for communications between a named city council member and city staff pertaining to a specified construction project. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.[1] 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. 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

[1]Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503 and Texas Disciplinary Rule of Professional Conduct 1.05, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 677 (2002), 676 at 1-2 (2002), 575 at 2 (1990). Furthermore, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code. ORDs 677, 676 at 1-2.

"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 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 claim the submitted information is protected by section 552.107(1) of the Government Code. You assert the submitted information consists of a communication involving city attorneys and city staff. You state the communication was made in confidence for the purpose of facilitating the rendition of professional legal services to the city and the communication has remained confidential. However, upon review, we find the communication at issue is with an individual you have not demonstrated is a privileged party. Therefore, we find you have failed to demonstrate the submitted information reveals privileged attorney-client communications for the purposes of section 552.107(1), and none of the submitted information may be withheld on that basis.

We note the submitted information includes an e-mail addresses that may be subject to section 552.137 of the Government Code.[2] 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

[2]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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 determine the city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless subsection (c) applies or the owner of the email address affirmatively consents to its disclosure.

In summary, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless subsection (c) applies or the owner of the e-mail address affirmatively consents to its disclosure. 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, 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,

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 533578

Enc. Submitted documents

c: Requestor
(w/o enclosures)