



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 16, 2017

Mr. Cristian Rosas-Grillet
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR2017-10512

Dear Mr. Rosas-Grillet:

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# 664306 (PIR No. W007359-041017).

The City of Laredo (the "city") received a request for communications sent or received by a named individual in reference to a specified matter. The city states it has released some information. You claim some of 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. *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. *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. Finally, 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. *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. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

The city asserts the submitted information constitutes confidential communications between the city attorney, city officials, and city employees that were made in furtherance of the rendition of professional legal services to the city. You also assert the communications were intended to be confidential and their confidentiality has been maintained. Upon review, we find you have demonstrated the applicability of the attorney-client privilege to the submitted information. Therefore, the city may generally withhold the submitted information under section 552.107(1) of the Government Code. However, we note the otherwise privileged e-mail string includes e-mails sent to or received from parties you have not demonstrated are privileged. Furthermore, if these e-mails are removed from the otherwise privileged e-mail string and stand alone, they are responsive to the request for information. Therefore, if the city maintains these non-privileged e-mails, which we have marked, separate and apart from the otherwise privileged e-mail string in which they appear, then the city may not withhold these non-privileged e-mails under section 552.107(1) of the Government Code and must release them to the requestor. In that event, as you raise no further exceptions to disclosure, the responsive non-privileged e-mails 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,

A handwritten signature in black ink, appearing to read 'Jesse Harvey', written over a light blue horizontal line.

Jesse Harvey
Assistant Attorney General
Open Records Division

JH/bw

Ref: ID# 664306

Enc. Submitted documents

c: Requestor
(w/o enclosures)