



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2017

Mr. Ronald D. Stutes
Counsel for the City of Palestine
Potter Minton, P.C.
500 Plaza Tower
110 North College Avenue
Tyler, Texas 75702

OR2017-16896

Dear Mr. Stutes:

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# 667972.

The City of Palestine (the "city"), which you represent, received a request for all records pertaining to a specified hangar at Palestine Airport and the requestor during a certain time period. You state the city has released some information to the requestor. You claim 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 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. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "to facilitate 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)(A), (B), (C), (D), (E). 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.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit 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 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 state the submitted information consists of communications between attorneys for the city and city employees made in furtherance of the rendition of professional legal services to the city. You state the communications were intended to be and have remained confidential. 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 one of the submitted e-mails includes an attachment shared with the requestor, a non-privileged party. Furthermore, if this attachment is removed from the e-mail at issue and stands alone, it is responsive to the instant request. Accordingly, if the city maintains this attachment, which we have marked, separate and apart from the otherwise privileged e-mail to which it is attached, then the city may not withhold the non-privileged attachment under section 552.107(1) of the Government Code. In this instance, as you have not raised any other exceptions to disclosure, the city must release the non-privileged attachment we have marked.

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 "Cole Hutchison". The signature is fluid and cursive, with a horizontal line underlining the name.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 667972

Enc. Submitted documents

c: Requestor
(w/o enclosures)