



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 24, 2019

Mr. Cary L. Bovey
Counsel for the City of Navasota
Law Office of Cary L. Bovey, P.L.L.C.
2251 Double Creek Drive, Suite 204
Round Rock, TX 78664

OR2019-26732

Dear Mr. Bovey:

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# 787273.

The City of Navasota (the "city"), which you represent, received a request for information pertaining to a specified permit. The city states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.107 and 552.137 of the Government Code. We have considered the claimed exceptions 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). 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).

The city asserts the information it has marked under section 552.107(1) consists of confidential communications between attorneys for and employees of the city that were made for the purpose of rendering professional legal advice. It also asserts the communications were intended to be confidential and their confidentiality has been maintained. Upon review, we find the city has demonstrated the applicability of the attorney-client privilege to this information. Therefore, the city may withhold the information it has marked under section 552.107(1) of the Government Code.

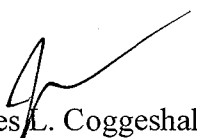
Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c), and the city does not inform us a member of the public has affirmatively consented to their release. Nevertheless, section 552.137 does not apply to the private e-mail addresses of government officials who use their private e-mail addresses to conduct official government business. *Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.). We are unable to determine whether the e-mail addresses at issue, which are located within e-mails communicating official business of the city, belong to a city official or employee. Thus, we rule conditionally. To the extent the e-mail addresses that the city has marked are the personal e-mail addresses of a city official or employee, then these e-mail addresses are not subject to section 552.137 and the city may not withhold them on that basis. *See id.* To the extent the e-mail addresses at issue are not the personal e-mail addresses of a city official or employee, then these e-mail addresses are subject to section 552.137 and the city must withhold them on that ground.

In summary, the city may withhold the information it has marked under section 552.107(1) of the Government Code. The city must withhold the e-mail addresses it has marked under section 552.137 of the Government Code, unless they are the personal e-mail addresses of a city official or employee. The city must release the remaining information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/gw

Ref: ID# 787273

Enc. Submitted documents

c: Requestor
(w/o enclosures)