



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 4, 2019

Ms. Barbara Bouleware-Wells  
Counsel for the City of Ranger  
The Knight Law Firm  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

OR2019-27837

Dear Ms. Bouleware-Wells:

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# 789474.

The City of Ranger (the "city"), which you represent, received a request for e-mails sent by a named city employee during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we marked, is not responsive to the instant request because it was created after the date the request was received. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we note some of the submitted responsive information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-27103 (2019). In that ruling, we concluded the following: (1) to the extent the city holds the information at issue solely as an agent of the grand jury, the city is not required to release that information in response to the instant request; (2) the city must withhold certain information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code; (3) the city may withhold certain information under section 552.108(a)(1) of the Government Code; (4) the city must withhold the peace officers' telephone numbers within the information at issue under section 552.117(a)(2) of

numbers under section 552.136 of the Government Code; (6) the city must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure; and (7) the city must release the remaining information. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the city must continue to rely on Open Records Letter No. 2019-27103 as a previous determination and withhold or release the information we marked in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.107(1) of the Government Code protects information subject to 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).

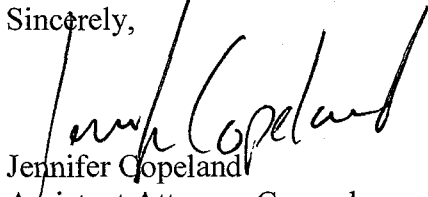
You state the remaining information constitutes a communication between an attorney for the city and a city employee that was made for the purpose of facilitating the rendition of professional legal services to the city. However, we find the information at issue was shared with parties you have not shown to be privileged. Thus, we conclude you have failed to establish the remaining information constitutes privileged communications for the purposes of section 552.107(1), and the city may not withhold it on that basis.

In summary, the city must continue to rely on Open Records Letter No. 2019-27103 as a previous determination and withhold or release the information we marked in accordance with that ruling. The city must release the remaining responsive 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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/be

Ref: ID# 789474

Enc. Submitted documents

c: Requestor  
(w/o enclosures)