



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 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

OR2019-30362

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# 791018.

The City of Ranger (the "city"), which you represent, received a request for specified payroll information; specified time sheets for four named employees; information pertaining to specialized training certifications of specified city employees and officials; audio recordings from a portion of a specified city building during specified time periods; and e-mails sent by a named city employee during a specified time period. You state the city does not have information pertaining to the requested audio recordings.¹ You inform us the city will release some of the requested information with the redaction of information pursuant to section 552.130(c) of the Government Code and Open Records Decision 684 (2009).² You claim some of the responsive information is subject to a previous ruling. You

¹ We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984). As you do not have information responsive to this portion of the request, we will not address your argument against disclosure under section 552.101 of the Government Code.

² Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance

also 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.

Initially, you state, and we agree, some of requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-28056 (2019). In that ruling, we concluded the following: (1) to the extent the customers whose information is at issue are natural persons who elected confidentiality prior to the date the city received the present request for information, the city must withhold certain information we marked under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code; (2) the city must withhold certain information we marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code; (3) the city may generally withhold certain e-mails we marked under section 552.107(1) of the Government Code; however, if the city maintains the non-privileged e-mails and attachments we marked separate and apart from the otherwise privileged e-mail strings in which they appear, then the city may not withhold these non-privileged e-mails and attachments under section 552.107(1) of the Government Code; (4) the city must withhold the employees' dates of birth under section 552.102(a) of the Government Code; (5) the city must withhold certain information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (6) to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold certain information we marked under section 552.117(a)(1) of the Government Code; (7) the city must withhold certain motor vehicle record information we marked under section 552.130 of the Government Code; (8) the city must withhold certain information we marked under section 552.136 of the Government Code; (9) the city must withhold a certain personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure; and (10) 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. 2019-28056 as a previous determination and withhold or release the information previously ruled upon 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

with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general opinion.

“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 submitted information constitutes communications between a city attorney and city employees that were made for the purpose of facilitating the rendition of professional legal services to the city. You also state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find the city may withhold the submitted information under section 552.107(1) of the Government Code.

In summary, the city must continue to rely on Open Records Letter No. 2019-28056 as a previous determination and withhold or release the information previously ruled upon in accordance with that ruling. The city may withhold the submitted information under section 552.107(c) of the Government Code.

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,

A handwritten signature in black ink, appearing to read 'Tim Neal', with a stylized flourish at the end.

Tim Neal
Assistant Attorney General
Open Records Division

TN/rm

Ref: ID# 791018

Enc. Submitted documents

c: Requestor
(w/o enclosures)