



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 14, 2020

Ms. Cynthia Trevino  
Counsel for the City of Gonzales  
Denton Navarro Rocha Bernal & Zech, P.C.  
2517 North Main Avenue  
San Antonio, Texas 78212-4685

OR2020-20496

Dear Ms. Trevino:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. This request was originally received by the Open Records Division of this office and assigned ID #839771. Preparation of the ruling has been assigned to the Opinion Committee of this office.

The City of Gonzales (the "City"), which you represent, received a request for correspondence to and from this office related to a Public Information Act complaint filed against the City (#828760). The City states that in responding to the request, city officials made a determination of information that was city related business and subject to the Act, and information that was not city related business and not subject to the Act. The City claims that some of the responsive information, contained in an attachment to the correspondence, is excepted from disclosure under section 552.107 of the Government Code.<sup>1</sup> We have considered the exceptions the City claims and reviewed the submitted information.

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<sup>1</sup>Although the City raises section 552.101 of the Government Code in conjunction with section 552.107 and other sections of chapter 552, this office has concluded section 552.101 does not encompass other exceptions found in the Act or discovery privileges. *See* Tex. Att'y Gen. ORD-676 (2002) at 1–2. The City also raises section 552.3035 of the Government Code, but we note that section 552.3035 is not an exception to disclosure by a governmental body under the Act. Rather, section 552.3035 governs the responsibility of this office to safeguard any information submitted to it in connection with a request for a ruling under section 552.301(e)(1)(D). *See* TEX. GOV'T CODE § 552.3035 (providing that the attorney general "may not disclose to the requestor or the public any information submitted" to the office in a ruling request). Finally, the City also raises section 552.002 of the Government Code, noting that city officials designated information that was not related to the transaction of official business and did not release that information to

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* TEX. 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. *Tex. Att'y Gen. 676 (2002)* at 6–7. 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.*, 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 that some of the submitted information consists of communications between the city officials/staff and lawyers/legal staff of the city attorney’s office. The information indicates these communications were made in furtherance of the rendition of professional legal services to the City. The City states these communications were confidential and not intended to be disclosed to third persons and that they have remained confidential and have not been disclosed to a third party or otherwise. Based on these representations and our review, we find the City has demonstrated the applicability of the attorney-client privilege to some of the information at issue, which we marked. Accordingly, the City may generally withhold the information we marked under section 552.107(1) of the Government Code. The City must release the remaining information.

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the requestor. However, the City does not provide such information for our review. Therefore, we do not address the City’s arguments under sections 552.101, 552.3035, or 552.002 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,

Becky P. Casares  
Assistant Attorney General  
Opinion Committee

BC/eb

Ref: ID# 839771

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

REF: ID #839771

VALORIE DANIEL  
5997 FM 108 S  
COST TX 78614