



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 18, 2020

Mr. Alexander Garcia
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469 9277

OR2020-28884

Dear Mr. Garcia:

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# 854019 (CityReq897).

The City of Corpus Christi (the "city") received a request for communications between listed parties on particular subjects during a specified period of time.¹ You state the city will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.² We have considered the exception you claim and reviewed the submitted representative sample of information.³

¹ You state the city sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed). As you have not submitted a copy of the written request for information, we take our description of the request from your brief.

² We note the city did not comply with the requirements of section 552.301(e) of the Government Code in providing some of the information at issue. *See* Gov't Code § 552.301(e). Nonetheless, because section 552.107 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

³ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* 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. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate 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 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. *See 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 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 in their capacities as clients that were made in furtherance of the rendition of professional legal services to the city. You further state these communications were intended to be, and have remained, confidential. Based on these representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to some of the information at issue. Thus, with the exception of the information we have marked for release, the city may generally withhold the submitted information under section 552.107(1) of the Government Code. We note, however, some of the e-mail strings at issue include e-mails received from or sent to individuals who you have not demonstrated are privileged. Furthermore, if these non-privileged e-mails are removed from the e-mail strings in which they are found and stand alone, we understand they are responsive to the

letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

request for information. Therefore, if these non-privileged e-mails, which we have marked, are maintained by the city separate and apart from the otherwise privileged e-mail strings in which they appear, then the city may not withhold the non-privileged e-mails under section 552.107(1) of the Government Code. Further, we find some of the remaining information, which we have marked for release, was sent to an individual you have not demonstrated to be a privileged party. Accordingly, the city may not withhold the information we have marked for release under section 552.107(1) of the Government Code.

To the extent the non-privileged e-mails exist separate and apart from the otherwise privileged e-mail strings in which they appear, we note some of this information is subject to section 552.117 of the Government Code.⁴ Section 552.117(a)(16) excepts from public disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a firefighter, volunteer firefighter, or emergency medical services personnel as defined by section 773.003 of the Health and Safety Code, regardless of whether the firefighter, volunteer firefighter, or emergency medical services personnel comply with section 552.024 or section 552.1175 of the Government Code. Gov't Code § 552.117(a)(16). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). In this instance, it is unclear whether the individual at issue is currently a firefighter, volunteer firefighter, or emergency medical services personnel. Accordingly, to the extent the individual at issue is currently a firefighter, volunteer firefighter, or emergency medical services personnel as defined by section 773.003 of the Health and Safety Code, the city must withhold the information we have marked under section 552.117(a)(16) of the Government Code. However, to the extent the telephone number at issue is a cellular telephone number, the city may only withhold it if a governmental body did not pay for the cellular telephone service. Conversely, to the extent the individual at issue is no longer a firefighter, volunteer firefighter, or emergency medical services personnel as defined by section 773.003, the city may not withhold the marked information under section 552.117(a)(16).

If the information we have marked under section 552.117 pertains to an individual who is no longer a firefighter, volunteer firefighter, or emergency medical services personnel, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision

⁴ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, to the extent the telephone number at issue is a cellular telephone number, the city may only withhold it if a governmental body did not pay for the cellular telephone service. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the city may not withhold the marked information under section 552.117(a)(1).

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 address at issue is not excluded by subsection (c). Accordingly, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, with the exception of the information we have marked for release, the city may generally withhold the submitted information under section 552.107(1) of the Government Code. However, if the city maintains the non-privileged e-mails, which we have marked, separate and apart from the otherwise privileged e-mail strings in which they appear, then the city may not withhold the non-privileged e-mails under section 552.107(1) of the Government Code. In this instance, the city must (1) withhold the information we have marked under section 552.117(a)(16) of the Government Code if the individual whose information is at issue is currently a firefighter, volunteer firefighter, or emergency medical services personnel as defined by section 773.003 of the Health and Safety Code, or (2) if the individual at issue is no longer a firefighter, volunteer firefighter, or emergency medical services personnel, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the individual timely requested confidentiality under section 552.024 of the Government Code. In either instance, to the extent the telephone number at issue is a cellular telephone number, the city may only withhold it if a governmental body did not pay for the cellular telephone service. The city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jm

Ref: ID# 854019

Enc. Submitted documents

c: Requestor
(w/o enclosures)