



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 25, 2009

Mr. Jason M. Rammel
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2009-02494

Dear Mr. Rammel:

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# 336436.

The City of Hutto (the "city"), which you represent, received a request for: (1) the city's past and current records retention and destruction policies, (2) communications between representatives of the city and representatives of Williamson County (the "county") related to the county landfill, (3) communications between representatives of the city and representatives of Waste Management, Inc., and (4) documents related to proposed athletic facilities and/or business parks that would have utilized land owned by the county or funds provided by the county. You state that the city has released a portion of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.107 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107(1) of the Government Code protects information that comes 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. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *See id.* at 7. Second, the communication must have been made "for the purpose of facilitating 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. *See In re Texas 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). Third,

the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *See* 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, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of 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, no writ). 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 that the e-mails you have marked in Exhibit C are communications among the city manager, city finance director, and city attorney, all of whom you have identified. You state that these communications were made in furtherance of the rendition of legal services to the city and you inform this office that these communications have remained confidential. Based on your representations and our review, we agree that the information you have marked in Exhibit C constitutes privileged attorney-client communications. Accordingly, the city may withhold this information under section 552.107 of the Government Code.

You also raise section 552.137 of the Government Code, which 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 section 552.137(c). *See* Gov’t Code § 552.137(a)-(c). You have marked several e-mail addresses for exclusion under this exception. We note that this office has previously determined that section 552.137 does not apply to a business’s general e-mail address. *See, e.g.,* Open Records Letter No. 2003-3627 (2003). Therefore the city must release the general business e-mail addresses we have marked. We have also marked for release several professional e-mail addresses belonging to city and county employees. Additionally, subsection (c)(1) states that subsection (a) does not apply to an e-mail address “provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor’s agent” and subsection (c)(2) states that subsection (a) does not apply to an e-mail address “provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor’s agent[.]” *Id.* § 552.137(c)(1), (2). Therefore, to the extent that the remaining e-mail addresses you have marked belong to employees of vendors who either have or are seeking a contractual relationship with the city, these e-mail addresses may not be withheld under section 552.137. We agree that the rest of the e-mail addresses you have marked are subject to section 552.137(a). We have also marked several additional e-mail

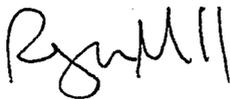
addresses, including personal e-mail addresses belonging to city employees or officials, that the city must also withhold under section 552.137(a), to the extent that the owners of these e-mail addresses have not consented to release.

In summary, the city: (1) may withhold the information you have marked under section 552.107, and (2) must withhold the e-mail addresses we have marked under section 552.137, to the extent that the owners of these e-mail addresses have not consented to release, with the exception that any such e-mail addresses belong to employees of vendors who either have or are seeking a contractual relationship with the city must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/eb

Ref: ID# 336436

Enc. Submitted documents

cc: Requestor
(w/o enclosures)