



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 23, 2009

Mr. Vic Ramirez  
Associate General Counsel  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220

OR2009-10259

Dear Mr. Ramirez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 350110.

The Lower Colorado River Authority (the "LCRA") received a request for information concerning the water agreement between the LCRA and the Salt Lick development project, also known as the Driftwood Municipal District. The requestor agrees to exclude bank account numbers from his request. The LCRA will release some information but asserts the remainder is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the LCRA's claimed exceptions to disclosure and have reviewed the submitted information.

Section 552.107(1) of the Government Code protects information coming 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. 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 "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. *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). 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)(A), (B), (C), (D), (E). 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 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).

The LCRA states Exhibits B-1 and B-2 are communications between the LCRA attorneys and their clients. Furthermore, the LCRA states the communications were intended to be confidential, and the confidentiality of the communications has been maintained. Upon review, we find the LCRA may withhold Exhibits B-1 and B-2 under section 552.107 of the Government Code.

Next, the LCRA asserts the telephone numbers in Exhibits B-3 and B-4 are private. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope

of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

We find the telephone numbers are not highly intimate or embarrassing and do not concern the most intimate aspect of human affairs. Thus, the LCRA may not withhold the telephone numbers in Exhibits B-3 and B-4 under common-law or constitutional privacy.

However, the cellular telephone number and other information of an LCRA employee in Exhibit B-4 may be excepted from section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and home telephone number, social security number, and family member information of a current employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). That is, an employee must make a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Thus, if the employee timely elected to withhold her personal information, the LCRA must withhold the information we marked under section 552.117(a)(1), including the cellular phone number if it is the employee's personal cellular telephone and the LCRA does not pay for the employee's cellular telephone service. *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).

Lastly, section 552.137 of the Government Code provides an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure. Gov't Code § 552.137(a). However, a private e-mail address may be disclosed if the member of the public affirmatively consents to its release. *Id.* § 552.137(b). Thus, the LCRA must withhold the private e-mail address we marked in Exhibit B-4 under section 552.137 unless the individual affirmatively consents to release it.

In summary, the LCRA may withhold Exhibits B-1 and B-2 under section 552.107. The LCRA must withhold the private e-mail address we marked in Exhibit B-4 under section 552.137 unless the individual affirmatively consents to release it. Lastly, if the employee timely elected to withhold her personal information, the LCRA must withhold the information we marked in Exhibit B-4 under section 552.117(a)(1), including the cellular phone number if it is the employee's personal cellular telephone and the LCRA does not pay for the employee's cellular telephone service.

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](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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 350110

Enc: Marked documents

c: Requestor  
(w/o enclosures)