



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2009

Ms. Denika R. Caruthers
Assistant District Attorney
Dallas County District Attorney's Office
Civil Division, Administration Building
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2009-12497

Dear Ms. Caruthers:

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# 354299.

The Dallas County Tax Assessor-Collector (the "tax assessor") received a request for information relating to (1) any correspondence from three named individuals regarding a "2005 Bentley with title issues;" (2) a tax collector hearing for a named individual, and (3) Precinct 5 deputy constables "repeatedly seeking assistance with vehicle and/or registrations." You state you have no responsive information regarding a portion of the request.¹ You state you will release some of the responsive information. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We assume 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 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.

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. *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. *See 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 the information in Exhibit C consists of confidential communications to and from the tax assessor’s office and its attorneys. You have identified the parties to the communications. You state these communications were made for the purpose of facilitating the rendition of professional legal services to the tax assessor. Further, you represent the communications at issue were intended to be and have remained confidential. Based on your representations and our review, we find the tax assessor may generally withhold the information in Exhibit C under section 552.107 of the Government Code. We note, however, that one of the individual e-mails contained in the submitted e-mail strings was sent by the requestor to the tax assessor’s office. To the extent this non-privileged e-mail exists separate and apart from the submitted e-mail string, it may not be withheld under section 552.107.

You assert the remaining information is confidential under section 552.130 of the Government Code. Section 552.130 of the Government Code provides as follows:

(a) information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state;

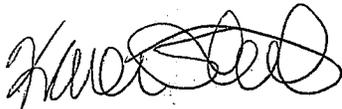
(2) a motor vehicle title or registration issued by an agency of this state;

Gov't Code § 552.130(a)(1), (2). The tax collector must withhold the information we have marked that relates to a Texas motor vehicle title or registration pursuant to section 552.130. In summary, the tax assessor may generally withhold the information in Exhibit C under section 552.107(1) of the Government Code; however, to the extent the marked non-privileged e-mail exists separate and apart from the submitted e-mail chains, the tax assessor must release it. The tax assessor must withhold the information we have marked in Exhibit B under section 552.130 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 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, toll free, at (888) 672-6787.

Sincerely,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/jb

Ref: ID# 354299

Enc. Submitted documents

c: Requestor
(w/o enclosures)