



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2009

Mr. Jeffrey L. Moore
City Attorney for the City of Roanoke
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-12696

Dear Mr. Moore:

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# 354714.

The City of Roanoke (the "city"), which you represent, received a request for twenty-one items of information relating to zoning issues involving the city and the former Town of Marshall Creek.¹ You state the city will release some of the responsive information. You claim that portions of the submitted e-mails 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. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client

¹You inform us that the Town of Marshall Creek was consolidated into the City of Roanoke pursuant to Chapter 61 of the Texas Local Government Code effective November 19, 2007.

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 that a portion of the submitted information, which you have marked, consists of confidential communications between the city and its attorneys. You have identified the parties to the communications. You state that these communications were made for the purpose of facilitating the rendition of professional legal services and that the confidentiality of the communications have been maintained. Based on your representations and our review, we find the city may generally withhold the information you have marked 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 consists of communications with non-privileged parties or parties that you have not identified. To the extent this non-privileged e-mail, which we have marked, exists separate and apart from the submitted e-mail string, it may not be withheld under section 552.107.

You have marked e-mail addresses as confidential under section 552.137 of the Government Code. Section 552.137 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). See Gov’t Code § 552.137(a)-(c). We note the city has marked an e-mail address that was provided to the city on letterhead. This e-mail address, which we have marked for release, may not be withheld under section 552.137. See *id.* § 552.137(c)(4) (stating that section 552.137 does not apply to e-mail addresses provided to a governmental body on a letterhead, coversheet, printed document, or other document

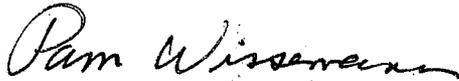
made available to the public). You do not inform us that the owners of the remaining e-mail addresses at issue have affirmatively consented to their public disclosure. Therefore, the city must withhold the remaining e-mail addresses you have marked under section 552.137.

In summary, the city may withhold the information you have marked under section 552.107 of the Government Code. However, to the extent the non-privileged e-mail we have marked exists separate and apart from the submitted e-mail chains, the city must release it. With the exception of the e-mail address that we have marked for release, the city must withhold the remaining e-mail addresses you have marked under section 552.137 of the Government Code. The remaining information 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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 354714

Enc. Submitted documents

c: Requestor
(w/o enclosures)