



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 7, 2009

Ms. Bonnie Lee Goldstein  
Bonnie Lee Goldstein P.C.  
Attorney for City of Princeton  
P. O. Box 140940  
Dallas, Texas 75214-0940

OR2009-14145

Dear Ms. Goldstein:

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# 357614.

The City of Princeton (the "city"), which you represent, received two requests from the same requestor for information pertaining to any pending complaints and investigations against the city's police department (the "department") from January 1, 2009 until the present and information pertaining to a complaint filed against the Chief of Police over the same time period.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure and rule 503 of the Texas Rules of Evidence. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>We note that the city asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

<sup>2</sup>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 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.

Initially, we note that some of the submitted e-mails in Exhibit A-5 and one of the submitted videos, which we have marked, are not responsive to the instant request because they were created after the date the instant request for information was received. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release that information in response to the request.

We next address your argument under section 552.107 of the Government Code as it is your most encompassing exception. Section 552.107(1) protects information coming within the attorney-client privilege. 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. 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, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* TEX. R. EVID. 503(b)(1)(A)-(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).

You state the city administrator, with the knowledge of the city council, directed the city attorney to conduct an investigation into a complaint that was received as to the conduct of

a member of the department. You inform us that the “investigation and resulting requested information was created at the behest of the City Attorney, in order to provide the appropriate legal advice to the City Administrator and to the City Council.” You state, and have provided an affidavit explaining, that Exhibits A-2, A-3, A-5, and A-6, as well as the submitted responsive videos, consist of attorney notes and information that either was provided to or was obtained by an attorney in connection with the pending investigation at issue. Based on your representations and our review, we find you have demonstrated that the information you seek to withhold is protected under the attorney-client privilege. *See Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (concluding that attorney’s entire investigative report was protected by attorney-client privilege where attorney was retained to conduct investigation in her capacity as attorney for purpose of providing legal services and advice). Accordingly, the city may withhold Exhibits A-2, A-3, A-5, and A-6, as well as the responsive videos, under section 552.107(1) of the Government Code.<sup>3</sup>

Exhibit A-7 contains an F-5 form (Report of Separation of License Holder), which is made confidential by section 1701.454 of the Occupations Code, which governs the release of reports or statements submitted to the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”). Section 552.101 of the Government Code 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 section 1701.454, which provides in relevant part that “[a] report or statement submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code.” Occ. Code § 1701.454(a). Accordingly, the city must withhold the F-5 form in Exhibit A-7 pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.<sup>4</sup>

In summary, the city may withhold the information you seek to withhold in Exhibits A-2, A-3, A-5, and A-6, as well as the responsive videos, under section 552.107 of the Government Code. The city must withhold the F-5 form in Exhibit A-7 under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The remaining responsive information must be released to the requestor.

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.

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

<sup>4</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/dls

Ref: ID# 357614

Enc. Submitted documents

c: Requestor  
(w/o enclosures)