



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2009

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-17271

Dear Mr. Bounds:

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# 363643.

The City of Corpus Christi (the "city") received a request for (1) the "Torno Report"; (2) scoring of proposals by the Coliseum Committee; and (3) communications relating to the request for proposals ("RFP") or the RFP process regarding the city coliseum or surrounding land. You state that some of the requested information either has been or will be released. You claim that other responsive information is excepted from disclosure under sections 552.107(1) and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted. We also have considered the comments that we received from the requestor. *See Gov't Code § 552.304* (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

The requestor states, among other things, that he does not seek access to e-mail addresses. Therefore, the marked e-mail addresses that the city seeks to withhold are not responsive to this request for information. Accordingly, this decision does not address the city's claim under section 552.137 of the Government Code for the marked e-mail addresses, and they need not be released in response to this request.

The city also raises section 552.107 of the Government Code. Section 552.107(1) 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 governmental body. *See* 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 Tex. 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 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. *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. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). 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).

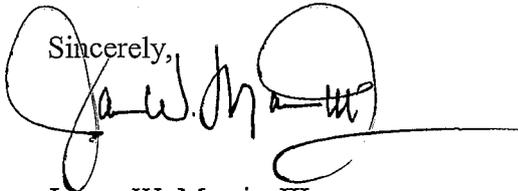
You have marked the information that the city seeks to withhold under section 552.107(1). You contend that the marked information, which is contained in e-mails and attachments to the e-mails, consists of privileged attorney-client communications. You state that these communications were made in furtherance of the rendition of professional legal services to the city. You also state that these communications were not intended to be and have not been disclosed to any non-privileged party. You have generally identified the parties to the communications. Based on your representations and our review of the information at issue, we conclude that section 552.107(1) is generally applicable to the information that the city seeks to withhold. We note, however, that some of the individual e-mails in the e-mail chains consist of communications with non-privileged parties or parties you have not

identified. Further, communications with non-privileged or unidentified parties are attached to some of the privileged e-mails. To the extent that those communications, which we have marked, exist separate and apart from the e-mail chains or from the e-mails to which they are attached, we conclude that the marked e-mails and attachments may not be withheld under section 552.107(1). Except for any non-privileged e-mails or attachments that exist separate and apart from the related e-mails, the city may withhold the information you have marked under section 552.107(1) of the Government Code. The rest of the responsive 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 363643

Enc: Submitted documents

c: Requestor
(w/o enclosures)