



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 30, 2012

Ms. Camila W. Kanau  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2012-01516

Dear Ms. Kanau:

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# 444135 (COSA File No. W004230).

The City of San Antonio (the "city") received a request for all documents pertaining to a named individual, including police reports, memos, and recordings. You state that the city plans to release the majority of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

You state a portion of the responsive information was the subject of previous requests for information, as a result of which this office issued Open Records Letter No. 2010-04287 (2010). In Open Records Letter No. 2010-04287, we determined the city may withhold the

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<sup>1</sup>Although you also raise rule 503 of the Texas Rules of Evidence, we note section 552.107 of the Government Code is the proper exception to raise for asserting the attorney-client privilege in this instance. *See* Open Records Decision No. 676 (2002).

<sup>2</sup>We 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 those records contain substantially different types of information than that submitted to this office.

information in Attachment 3 pursuant to section 552.107(1) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the prior rulings were based. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office contained in Attachment 3, we conclude the city may rely on Open Records Letter No. 2010-04287 as a previous determination and withhold the identical information in accordance with that ruling.<sup>3</sup> See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 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 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 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

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

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 you have marked in Attachment 2 consists of confidential communications made in furtherance of professional legal services rendered to the city. You state these communications contain legal advice and opinions regarding questions raised by city staff. You state these communications were intended to be confidential and that the confidentiality has been maintained. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue in Attachment 2. Accordingly, except for the information you have marked for release, the city may withhold the information in Attachment 2 under section 552.107(1) of the Government Code.<sup>4</sup>

The information marked for release includes e-mail addresses of members of the public. Section 552.137 of the Government Code 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 owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c).<sup>5</sup> *See Gov’t Code* § 552.137(a)-(c). Section 552.137 is not applicable to the work e-mail address of an employee of a governmental body because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the city may withhold the requested information that is identical to the information previously requested and ruled upon by this office contained in Attachment 3, in accordance with Open Records Letter No. 2010-04287. Except for the information you have marked for release, the city may withhold the information in Attachment 2 under section 552.107(1) of the Government Code. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

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.

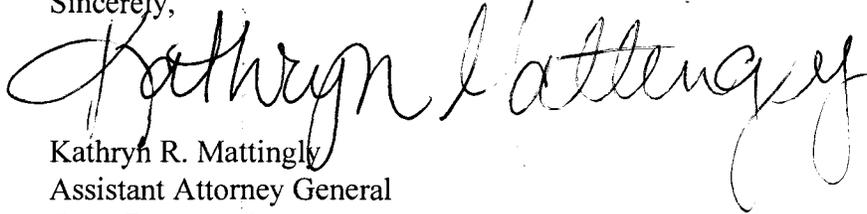
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<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure under Texas Rule of Evidence 503.

<sup>5</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

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,



Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/som

Ref: ID# 444135

Enc. Submitted documents

c: Requestor  
(w/o enclosures)