



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2013

Ms. L. Carolyn Nivens
Paralegal
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2013-06639

Dear Ms. Nivens:

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# 484997 (City Reference No. CSO# 13-038).

The City of League City (the "city"), which you represent, received a request for e-mails sent between four named individuals on two specified dates. You contend portions of the submitted information are not public information under the Act. You also claim the submitted information is excepted from disclosure under sections 552.107 and 552.137 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.

You argue portions of the submitted information do not constitute public information for purposes of the Act. The Act is applicable to "public information," which consists of:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

¹Although you raise section 552.101 of the Government Code, you have not submitted arguments in support of that exception; therefore, we assume you have withdrawn it. *See* Gov't Code §§ 552.301, .302. Furthermore, we note section 552.021 of the Government Code is not an exception to disclosure under the Act. *See id.* § 552.021.

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, such as source codes, documentation information, and other computer programming, is not the kind of information made public under section 552.021 of the Government Code. *See* ORD 581 at 6 (construing predecessor statute).

You state some of the information you have marked consists of “source codes and/or internet protocol [(‘IP’)] addresses [in connection] with the private e-mail address and/or the [c]ity’s internet service provider.” You contend the IP addresses and other information you have marked have no significance other than their use as tools for the maintenance, manipulation, or protection of public property. We disagree. We understand the information at issue pertains to the use of city computers and networks by city employees. You do not indicate this usage of city computers was a *de minimis* personal usage by city employees not related to public business. Furthermore, you inform us the submitted information was prepared by the city council members, the city attorney, and city staff concerning policy making procedures. Thus, we find the submitted IP addresses and other information you have marked do have public significance other than their use as tools for the maintenance, manipulation, or protection of public property. Accordingly, we find the information at issue is public information subject to the Act. Accordingly, we will consider your arguments against 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 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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. 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, *id.*, 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, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain 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 submitted e-mails reflect communications between city council members and the city attorney involving an item that is to be placed on a future agenda for reconsideration by the city council. You state the communications were made to facilitate the rendition of professional legal services, and the communications were intended to be and have remained confidential. Based on your representations and our review, we find the city has demonstrated the applicability of the attorney-client privilege to the submitted information. Therefore, the city may withhold the submitted information under section 552.107 of the Government Code.²

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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/som

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 484997

Enc. Submitted documents

c: Requestor
(w/o enclosures)