



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2013

Ms. Danielle R. Folsom
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2013-09745

Dear Ms. Folsom:

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# 489705 (G.C. NoS. 20403, 20379, and 20491).

The City of Houston (the "city") received four requests for all documentation related to the requestor or the requestor's complaints to the city with the exception of documents created after May 5, 2011 that the Office of the Attorney General specifically authorized the city to withhold. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you state that you have released some of the requested information, including information responsive to the first request received by the city on February 20, 2013. We note a portion of the submitted information is responsive to the February 20, 2013 request, and you claim section 552.107 for this information. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); see also Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law).* Accordingly, pursuant to section 552.007, the city may not now withhold any previously released information unless its release is expressly prohibited by law

or the information is confidential under law. Although you raise section 552.107 for the information at issue, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, we have marked the submitted information responsive to the February 20, 2013 request for release.

Next, you inform us some of the responsive information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2010-17492 (2010) and 2013-01585 (2013). In Open Records Letter No. 2010-17492, we concluded the city must withhold certain information under section 552.117 of the Government Code and must release the remaining information. In Open Records Letter No 2013-01585, we determined the city may withhold information we marked that was not responsive to the requestor's May 5, 2011 request, under Texas Rule of Evidence 503 and must release the remaining information. As we have no indication the law, facts, or circumstances upon which the prior rulings were based have changed, the city must continue to rely on Open Records Letter Nos. 2010-17492 and 2013-01585 as previous determinations and withhold or release the information at issue in accordance with those rulings. *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 information is or is not excepted from disclosure). To the extent the remaining information is not subject to Open Records Letter Nos. 2010-17492 and 2013-01585, we will address your argument.

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. ORD 676 at 6-7. 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 inform us the remaining information consists of correspondence communicated between city attorneys and city employees in their capacity as clients. You explain this information was communicated in furtherance of the rendition of professional legal services to the city. You further state the information at issue was not intended for release to third parties, and its 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 submitted information. Therefore, the city may withhold the remaining information under section 552.107 of the Government Code.

In summary, the city must release the submitted information that is responsive to the February 20, 2013 request. The city must continue to rely on Open Records Letter Nos. 2010-17492 and 2013-01585 as previous determinations and withhold or release the information at issue in accordance with those rulings. The city may withhold the remaining information under section 552.107 of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 489705

Enc. Submitted documents

cc: Requestor
(w/o enclosures)