



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 12, 2014

Mr. Grant Jordan  
Assistant City Attorney  
Office of the City Attorney  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2014-16114

Dear Mr. Jordan:

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# 537773 (PIR No. W035334).

The City of Fort Worth (the "city") received a request for all legal opinions, including a specified opinion, from city attorneys to a named individual pertaining to two specified topics. You claim some of the submitted information is not responsive to the request. You also claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Although you also raise Texas Rule of Evidence 503 for the submitted information, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code. *See* Open Records Decision No. 676 at 1-2 (2002).

<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, you assert some of the submitted information is not responsive to the present request. You state the information at issue, which you have marked, may not have been provided to the named individual. As we cannot determine whether the information at issue was provided to the named individual, we must rule conditionally. If the information at issue was not provided to the named individual, then it is not responsive to the request and need not be released to the requestor. To the extent the information at issue was provided to the named individual, then it is responsive to the request, and we will address your argument under 552.107 for this information.

You inform us some of the submitted information, which you have marked, was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2014-14533 (2014). In that ruling, we determined, in relevant part, the city may withhold the information at issue under section 552.107(1) of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the city may continue to rely on Open Records Letter No. 2014-14533 as a previous determination and withhold this 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). As we are able to make this determination, we need not address your submitted argument for the information at issue.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. Gov't Code § 552.107. 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 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

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

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). 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, 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, 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 remaining responsive information consists of communications between city attorneys, city staff, and a former city officer in the course of providing legal services to the city. You state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find the remaining responsive information consists of privileged attorney-client communications. Therefore, the city may withhold the remaining responsive information under section 552.107(1) of the Government Code.

In summary, if the information you have marked was not provided to the named individual, then it is not responsive to the request and need not be released to the requestor. The city may continue to rely on Open Records Letter No. 2014-14533 as a previous determination and withhold the information you have marked in accordance with that ruling. The city may withhold the remaining responsive information under section 552.107(1) 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](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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long, sweeping horizontal line extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 537773

Enc. Submitted documents

c: Requestor  
(w/o enclosures)