



January 20, 2023

Bill Oliver
oliver@bryanbroadcasting.com

Re: Open Records Request

Dear Mr. Oliver:

On January 18, 2023, the City received your request for an email sent by City Attorney Adam Falco to Councilmember Elizabeth Cunha about solicitors.

The City has contacted the Attorney General of Texas for an opinion on whether the information you have requested is excepted from disclosure under the Texas Government Code. If Attorney General Paxton rules that the requested information is not excepted from disclosure, the public information will be released to you promptly. You will be notified of the decision. A copy of the letter to the Attorney General's Office regarding your request is enclosed, as well as the City's argument for withholding the information.

Please call me at (979) 764-3507 with any questions you may have regarding this information. Thank you.

Sincerely,

Gavin Midgley
Assistant City Attorney II

Legal Department

P.O. BOX 9960 • 1101 TEXAS AVENUE • COLLEGE STATION • TEXAS • 77842
TEL. 979.764.3507 • FAX. 979.764.3481

cstx.gov



January 20, 2022

The Honorable Ken Paxton
Texas Attorney General
ATTN: Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Open Records Decision; A23-000195

Dear Attorney General Paxton:

On January 18, 2023, the City of College Station received a request for public information from Bill Oliver, for an email sent by City Attorney Adam Falco to Councilmember Elizabeth Cunha about solicitors.

The request is enclosed marked as Exhibit 1. Mr. Oliver has been informed of the City's exceptions claim to your office for the information. A copy of the requested information is enclosed as Exhibit 2.

The City claims certain exceptions further described in the City's brief pursuant to Tex. Gov't Code. Ann. §552.107 and Tex. R. Evid. 503.

Thank you for your time and consideration. Please call me at (979) 764-3507, if you need any additional information.

Sincerely,

Gavin Midgley
Assistant City Attorney II

Enclosures

cc: Requestor

Legal Department

A23-000195

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CITY OF COLLEGE STATION



CITY'S BRIEF IN SUPPORT

OF WITHHOLDING

COUNTY OF BRAZOS

OPEN RECORDS REQUEST

ISSUE PRESENTED

Whether the City of College Station may withhold under Tex. R. Evid. 503 and Tex. Gov't Code. § 552.107, information requested by Bill Oliver, which the City received on January 18, 2023, for an email sent by City Attorney Adam Falco to Councilmember Elizabeth Cunha.

SUMMARY OF FACTS

The City of College Station (hereinafter referred to as the "City" or "College Station") received a request under the Texas Public Information Act (the "Act", chapter 552 of the Government Code) from Bill Oliver for an email sent by City Attorney Adam Falco to Councilmember Elizabeth Cunha about solicitors. The City is asserting that the requested information is excepted from the requirements of Section 552.021 because it is information protected by the attorney-client privilege.

DISCUSSION

The information should be withheld under Tex. R. Evid. 503; Tex. Gov't Code §552.107(1)¹. Information is excepted from the requirements of Section 552.021 if it is information protected by the attorney-client privilege. City Exhibit 2 consist of electronic communications between Councilmember Cunha and the City Attorney's Office and is responsive to this request.

The first part of this test is whether the information constitutes or documents a communication. *Id.* at 7; *Tex. R. Evid.* 503 (b) (1). The requested information is communication because the requested information consists of an email between a councilmember of the City of

¹ Open Records Decision No. 676 at 4 (2002).

College Station and an attorney with the College Station City Attorney's Office. The second part of the test is the communications must have been made to facilitate the rendering of professional legal services to the client governmental body. *Id.*; *Tex. R. Evid.* 503 (b) (1). These communications satisfy that test because they were between an attorney and a councilmember of a client governmental body regarding the application of the law to facts before the client. This communication is a solicitation of legal opinions and legal advice from a client and the rendition of professional legal services to the client.

The third part is the privilege applies only to communication between or among clients, client representatives, lawyers, and lawyer representatives. *Id.* at 8-10; *Tex R. Evid.* 503 (b) (1) (A) (B) (C) (D) (E). The sender and recipient of this communication consist only of a councilmember and an attorney in the City Attorney's Office.

The fourth part of the test is the communication must be confidential 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. *Id.* at 10; *Tex R. Evid.* 503 (b) (1). This communication was between a City councilmember and the City's legal counsel and was not intended for disclosure to third parties outside of the City. The communication the City is seeking to withhold is solely between the City's attorney and their client. No third parties were privy to this communication.

The final part of the test is the communication must have remained confidential and have not been waived by the client. *Id.* at 10 – 11. The confidential communication has not been disclosed to any third party or to a non-client of the City. The confidential communication was only between an attorney and client. The attorney – client privilege has not been waived by the City or any of its employees who are all represented by the City's attorney.

The release of this information would violate one of the most regarded principles of the legal profession. The City and its employee clients have not waived the attorney – client privilege and will not waive the privilege. This requested information should and must be withheld under *Tex. Gov't Code* § 552.107(1); *Tex. R. Evid.* 503.

CONCLUSION

The City respectfully asks the Attorney General to withhold the requested information based upon the exceptions found in Tex. Gov't Code § 552.107(1) and Tex. R. Evid. 503.

Respectfully submitted,

CITY OF COLLEGE STATION

BY: 

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