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March 12, 2018

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

Certified Mail No.: 7016 2140 0000 1153 5554

Re: City of Fort Worth Public Information Request No. W069672 from Jay Cassano
Request for All Records Pertaining to Axon Citizen

Dear Attorney General Paxton:

On February 19, 2018, the City of Fort Worth received a written request from Jay Cassano (the “requestor”) for all records pertaining to Axon Citizen. Exhibit “A” contains a certification of the date the City received the request. A copy of the request is included as Exhibit “B.” On March 5, 2018, the City requested a ruling from your office

The City has released some information to the requestor. However, the City believes that the remaining responsive records are excepted from disclosure under sections 552.107 and 552.305 of the Texas Government Code. Therefore, the City is seeking a ruling from your office in accordance with section 552.301 of the Texas Government Code. Exhibit “C” contains the information at issue.¹

Information within the attorney-client privilege is confidential and must not be disclosed.

The City contends that some of the enclosed documents, which are marked under Section 552.107 of the Texas Government Code and Rule 503 of the Texas Rules of Evidence, may be withheld pursuant to Section 552.107(1) of the Texas Government Code and Rule 503 of the Texas Rules of Evidence.

Section 552.107 protects information that comes within the attorney client privilege. The test for determining whether information is protected under the attorney client privilege under Section 552.107 is the same as the test under Texas Rules of Evidence 503. First, a governmental body must demonstrate that the information constitutes or documents a

¹ Some of the materials at issue may be protected by copyright. This office will only allow inspection of such documents deemed to be public information.

OFFICE OF THE CITY ATTORNEY

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communication. Open Records Decision 676 at 7 (2002). 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). 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). Fourth, 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), (b)(1).

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, no writ). Moreover, because a client may elect to waive the privilege at any time, your office has also held that a governmental body must explain that the confidentiality of a communication has been maintained. Your office has also stated that Section 552.107(1) and Rule 503 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); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

The submitted records consist of emails between an assistant city attorney and the police department concerning legal advice. The submitted records were created and are maintained in the course of providing professional legal services to the City of Fort Worth. The record includes communications to and from attorneys for the City, acting in their capacities of providing professional legal services, and employees and officers of the City acting in their official capacities as clients or client representatives. These communications were made "for the purpose of facilitating the rendition of professional legal services" to the client. Finally, those parties involved at the time the information was communicated intended the information to be kept confidential and that confidentiality has been maintained since the information was communicated. Because all of the elements of the attorney-client communication privilege are present and the privilege has not been waived and because the records constitute confidential information which the City Attorney and her Assistant City Attorneys are prohibited from disclosing under Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, the City contends that the submitted records are excepted from disclosure in their entirety pursuant to Section 552.107 and Rule 503.

Confidentiality of Trade Secrets; Confidentiality of Certain Commercial or Financial Information

In accordance with section 552.305 of the Texas Government Code, the City is requesting a ruling from your office but is not taking a position regarding whether the

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information at issue should be withheld. The City has notified the interested third parties of the requests and of their opportunity to submit comments to your office.

Respectfully submitted,



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c: Jay Cassano
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