



December 14, 2015

Honorable Ken Paxton  
Attorney General of Texas  
300 W. 15th Street  
Clements Building, 12th Floor  
P.O. Box 12548  
Austin, Texas 78711

Re: Request for an Open Records Decision

Dear Mr. Attorney General Paxton:

On December 3, 2015, our office submitted a request for an open records decision to you (Exhibit A) regarding a request by Hal Barker.

This office is responsible for representing the legal interests of the city. Our December 3, 2015 submission is incorporated into this submission, including Mr. Barker's request. We listed the exceptions under the Public Information Act, Chapter 552, Texas Government Code (the "Act") which might apply to the requested information in our December 3, 2015 correspondence. In this submission, we shall expand upon and explain the reasons we believe these exceptions apply to the requested information. In our opinion, some of the requested information is excepted from required public disclosure under Section 552.107 of the Public Information Act, Chapter 552, Texas Government Code (the "Act"). Under Section 552.301 of the Act, this office now seeks your determination about whether this information is exempt from disclosure.

Exhibit B consists of a representative sample of the attorney-client communications contained in the requested information. Exhibit B consists of attorney-client communications from attorneys in the City Attorney's Office to their client (a city department) and attorney-client communications from a client (a city department) to their attorney. It is our opinion that the documents in Exhibit B are exempt from disclosure under Section 552.107(1) of the Act which exempts from disclosure "information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct." A governmental body generally may withhold under Section 552.107(1) information revealing client confidences or containing legal advice or opinion. ORD No. 574 (1990). The Texas Rules of Evidence define the general rule of attorney-client privilege as "a confidential communication made for the purpose of facilitating the rendition of professional legal services to the client." Tex. R. Evid. 503(b)(1). These documents clearly consist of confidential communications made by clients (city staff) to their attorney for the purpose of seeking professional legal services and communications made by attorneys to their client for the purpose of rendering legal services. Release of these documents would violate the attorney-client

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privilege by revealing confidential communications made between an attorney and a client for the purpose of facilitating the rendition of professional legal services.

It is our opinion that the documents in Exhibit B are also exempt from disclosure under Rule 503(b) of the Texas Rules of Evidence for the same reasons as stated above.

If you have any questions regarding this request for an open records decision please contact me at 214-670-3519.

Respectfully submitted,



HEATHER SILVER  
Assistant City Attorney

Attachments

c: (with Exhibit A only)  
Warren M. S. Ernst, City Attorney  
Ileana Fernandez, Chief of the General Counsel Division  
Barbara Martinez, Assistant City Attorney  
Carolyn Brescia, Park and Recreation Department  
Jeri Carter, Public Information Office

Hal Barker  
9191 Garland Road 1126  
Dallas, Texas 75218  
hbarker\_2011@yahoo.com

“EXHIBIT A”



December 3, 2015

Honorable Ken Paxton  
Attorney General of Texas  
300 W. 15th Street  
Clements Building, 12th Floor  
P.O. Box 12548  
Austin, Texas 78711

Re: Request for an Open Records Decision

Dear Mr. Attorney General Paxton:

By email (Exhibit A) received by the city of Dallas ("city") on November 19, 2015, Hal Barker requested information pertaining to the Joppa Connector and the AT&T Trail.

The city is gathering the requested information and it is anticipated that some of the requested information will be exempt from mandatory disclosure under the Public Information Act, Chapter 552, Texas Government Code (the "Act"). The City Attorney's Office is responsible for representing the legal interests of the city and since we have not been able to review all the requested information, we would assert that certain information contained in Mr. Barker's request may be protected from disclosure under Sections 552.101 through 552.154 of the Act, in particular Sections 552.101, 552.107, and 552.111 of the Act. Under Section 552.301 of the Act, this office now seeks your determination about whether this information is exempt from disclosure.

City offices were closed on November 26, 2015 and November 27, 2015 for Thanksgiving. Our comments stating the reasons why the Act exempts the requested information from disclosure, and copies of the requested information (or samples if voluminous), will be sent to your office by December 14, 2015, as required by Section 552.301(e) of the Act.

If you have any questions regarding this request for an open records decision please contact me at 214-670-3519.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Heather Silver'.

HEATHER SILVER  
Assistant City Attorney

Attachments

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c: Warren M. S. Ernst, City Attorney  
Ileana Fernandez, Chief of the General Counsel Division  
Barbara Martinez, Assistant City Attorney  
Carolyn Brescia, Park and Recreation Department  
Jeri Carter, Public Information Office

Hal Barker  
9191 Garland Road 1126  
Dallas, Texas 75218  
hbarker\_2011@yahoo.com

“EXHIBIT A”

**Carter Lawson, Jeri**

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**From:** Hal Barker <hbarker\_2011@yahoo.com>  
**Sent:** Thursday, November 19, 2015 12:02 PM  
**To:** OpenRecords  
**Cc:** Hammond, Vana  
**Subject:** Texas Public Information Act Request

**Categories:** Jeri

November 19, 2015

City of Dallas Open Records.

This is a request under the Texas Public Information Act.

It is my belief that documents related to this request are primarily in the care and control of Trinity Watershed Management and the Dallas Park and Recreation Department. However, other departments may have records pertinent to this request.

For clarity, I have included quotations obtained from the Fort Worth Corps of Engineers that identify with particularity the subject matter of each individual request.

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Corps of Engineers quote.

1. Did it (City of Dallas ) have a 404 permit for work on the Joppa Connector?

No.

"Portions of the AT&T Trail were constructed in wetlands that are waters of the United States without the requisite 404 permit. The city self-reported and stopped work in waters of the United States. We required them to apply for an after-the-fact permit which is when Regulatory Division, Fort Worth District, U.S. Army Corps of Engineers, learned of the Joppa Connector project.

Since we view the Joppa Connector and AT&T trail as essentially being the same trail-building effort, the impacts will be combined and be permitted as one."

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Open Records Request:

Please provide me with all records relating to the statement by the Corps of Engineers that "Portions of the AT&T Trail were constructed in wetlands that are waters of the United States without the requisite 404 permit. The city self-reported and stopped work in waters of the United States."

These records should include all emails, letters, and documents relating to the unpermitted AT&T trail constructed under contract to the City of Dallas.

These records should include all internal and external emails, letters, and document that discuss a permit or permits relating to the AT&T trail from any Texas state agency or any federal agency, including the EPA, Corps of Engineers, TCEQ, or any other local, state, or federal agencies.

These records should include any self-reporting emails, letters, or documents sent to any regulatory agency, discussing anything related to any regulatory requirement for permits to be obtained for construction in the waters of the United States or waters under the jurisdiction of the State of Texas or any other entity in this matter.

These records should include any emails, letters, and documents relating to the Joppa Connector relating to Section 404 and the decision not to obtain and/or failure to obtain Section 404 permits prior to construction. This also means internal discussion within the City of Dallas reduced to paper or electronic document or recording that would document the process. These records should include documents that cite conclusions or decisions that led to the decision not to obtain Section 404 permits, but can EXCLUDE legal opinions not available under the Texas Public Information Act.

These records should include any stop work order sent or transmitted to the Joppa Connector contractor, including any emails, letters, or documents between the City of Dallas and the contractor in any way discussing the stoppage of work and the need for a Section 404 permit.

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Corps of Engineers Quote:

2. Has it (City of Dallas) since applied for a 404 permit for the Joppa Connector?

Yes. The city of Dallas applied for a permit for the combined AT&T-Joppa Connector but it is incomplete. The Corps is awaiting certain pertinent information regarding the amount of wetlands which were impacted by the construction. The Corps anticipates receiving the missing information so that it can post a public notice on the project before the end of the calendar year.

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Request for documents:

Please provide me with all emails, letters, or documents relating to a permit applied for by the City of Dallas for a Section 404 permit for the combined AT&T-Joppa Connector.

These records should include all emails, letters, and documents to the Corps of Engineers and from the Corps of Engineers relating to the permit application and/or prior lack of an application for a Section 404 permit in this matter. This should also include any emails, letters, or documents identifying deficiencies or errors in the pending application, and all methods to remediate any deficiencies or errors or that identify additional information to facilitate the permit application.

These records should include all emails, letters, and documents sent to any member of Congress, whether Senate or House of Representatives, in any way relating to the application for a Section 404 permit in this matter. Any emails, letters, and documents sent to the Department of Defense outside of the Corps of Engineers with regard to this matter should also be included.

These records should include any environmental impact studies and reports submitted to the Corps of Engineers by the City of Dallas or agents of the City of Dallas.

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Corps of Engineers quote:

3. Did the Corps issue a stop-work order? Can you provide a copy?

No. The city self-reported and itself stopped work in the waters of the United States.

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**Request for documents.**

Please provide me with all emails, letters, and documents relating to "self-reporting" of problems relating to a Section 404 permit or lack thereof for the AT&T Trail-Joppa Connection construction.

These records should include all internal City of Dallas email, letters, or documents, that would document the process that led to the "self-reporting" to the Corps of Engineers.

These records should be of sufficient and adequate nature to identify who knew of the issues relating to Section 404 permits, when they knew, to whom this was reported internally within the City, and what steps were taken to begin the process of "self-reporting."

These records should include all emails, letters, and documents exchanged between the Corps of Engineers and the City of Dallas relating to the "self-reporting."

**Conclusion:**

Due to the expected volume of records cited in this request, I am open to narrowing the scope of this request as long as I obtain adequate documents pursuant to this request.

If any of these documents are subject to attorney/client privilege, please segregate those documents prior to any submission of a Texas Attorney General Opinion Request.

I should note that on November 3, 2015, I asked for information relating to the subject matter of this request and was later told that information would be forthcoming. No effort was made to claim attorney/client privilege. Indeed, substantive disclosure was promised on multiple occasions without reference to attorney/client privilege, and a licensed attorney was involved in these discussions. The mere asking for information can and does constitute a valid Texas Public Information Request.

I would like to inspect these records prior to any purchase of records.

Hal Barker  
9191 Garland Road 1126  
Dallas, TX 75218  
hbarker\_2011@yahoo.com