



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 24, 1994

Ms. Cathy Cunningham
Senior Assistant City Attorney
City of Irving
P.O. Box 152288
Irving, Texas 75060

OR94-083

Dear Ms. Cunningham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).¹ Your request was assigned ID# 23156.

The City of Irving (the "city") has received an open records request for the minutes from the October 27, 1993 city council meeting and "copies of all items and information with respect to agenda item number one, concerning medical control for the fire department/paramedics." You indicate that the city is providing tape recordings of the meeting "as well as most of the written material" but that you have not released a letter and attachments (the "letter") which were reviewed by councilmembers at the meeting.² You assert that third party interests may be involved. Section 552.305 provides, in part:

In a case in which information is requested under this chapter and a third party's privacy or property interests may be involved . . . a governmental body may decline to release the information for the purpose of requesting an attorney general decision.

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

² Because you have not submitted any other records, this office assumes that you have released all other requested material. See Open Records Decision No. 197 (1978) (failure to submit documents raises presumption the information is public).

The letter in question was written by a private attorney and sent to one of the councilmembers. We assume that you intend to assert the attorney-client privilege under section 552.107. Open Records Decision No. 574 (1990) (attorney-client privilege should be asserted under this section). Section 552.107 excepts information, in part:

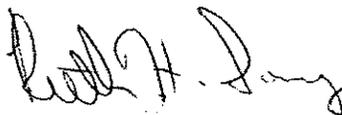
if it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to a client under the Rules of the State Bar of Texas.

This exception has been applied when a governmental body is the client. Open Records Decision Nos. 574 (1990); 462 (1987). You have not asserted any attorney-client privilege as to the city and the private attorney. You suggest there is an attorney-client relationship between the individual councilmember and the attorney who wrote the letter and that the letter is privileged on that basis.³

Rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct prohibits a *lawyer* from knowingly revealing confidential information to any person that the *client* has instructed is not to receive the information. See *Warrilow v. Norrell*, 791 S.W.2d 515, 519 (Tex. App.--Corpus Christi 1989, writ denied) (Disciplinary Rules establish mandatory minimum level of conduct for *lawyers*). Your office has informed us that the councilmember, not the attorney, distributed copies of the letter to other members of the council. A *client* may share confidential information with whomever he chooses, but this disclosure waives the privilege. 8 J. WIGMORE, EVIDENCE §§ 2326 - 2327 (J. McNaughton rev. ed. 1961 & Supp. 1991). As the councilmember waived any attorney-client privilege that might have attached to the letter, section 552.107 does not except the letter from disclosure. As you have stated no other basis on which this information should be excepted from disclosure, it must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

³We assume for purposes of this ruling that there actually is an attorney-client relationship between the councilmember and the attorney to which section 552.107 might apply.

RHS/mrc

Ref.: ID #23156
ID# 23157
ID# 23342

Enclosures: Submitted documents

cc: Ms. Kimberly A. Nicholas
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(w/o enclosures)