



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 26, 1995

Ms. Alesia L. Sanchez  
Legal Assistant  
Legal and Compliance, MC110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR95-290

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30561.

The Texas Department of Insurance (the "department") received a request for its complete files on Contractors Bonding and Insurance Agency, Inc., Henry Shaw, and Doris Shaw. You state that some of the requested information will be made available to the requestor. However, you assert that the department may withhold from required public disclosure the remaining requested information based on sections 552.107(1) and 552.111 of the Government Code. You submitted to this office a representative sample of the information the department seeks to withhold. This sample consists of one document from Barbara Stansfield to Patrick Dwyer, Section Chief of the Agent Activities Section, Legal.

Section 552.107(1) states that information is excepted from required public disclosure if:

it is 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 Rules of the State Bar of Texas.

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 (1990) at 5, 462 (1987) at 13-14.

Thus, this exception protects only the essence of the confidential relationship between attorney and client from the disclosure requirements of the Open Records Act. Open Records Decision No. 574 (1990) at 5. This means that section 552.107(1) only excepts the part of a communication that reveals attorney advice and opinion or client confidences. *See id.* We have marked the portions of the document that the department may withhold based on section 552.107(1).

You also raise section 552.111. We will consider whether section 552.111 applies to the portions of the document to which section 552.107(1) does not apply.

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

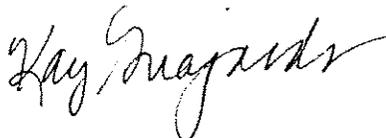
This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.*

The portions of the document to which section 552.107(1) does not apply are factual. As section 552.111 does not except purely factual information, we conclude that the department may not withhold the factual portions of the document based on section 552.111 of the Government Code.

The fact that you submitted this document as a "representative sample" indicates that the department possesses other documents which it seeks to withhold based on sections 552.107(1) and 552.111. However, we cannot apply these exceptions without reviewing the particular documents. This open records letter does not reach, and therefore does not authorize the withholding of any other requested records. If you wish to withhold any other documents based on section 552.107(1) or section 552.111, you must submit those documents to this office for our review.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular record at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Government Section

KHG/rho

Ref.: ID# 30561

Enclosures: Marked document

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(w/o enclosures)