



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

Mr. Kevin McCalla
Acting Deputy Director
Office of Legal
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR95-808

Dear Mr. McCalla:

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# 33652.

The Texas Natural Resource Conservation Commission (the "commission") received a request for six categories of documents related to an enforcement action against the Southland Corporation ("Southland") regarding a site referred to as "7-11 Store No. 25945." You state that the commission has produced a majority of the requested information to the requestor. However, you claim that a portion of the requested information is excepted from disclosure under section 552.107(1) of the Government Code. You have submitted as Exhibit "C" the documents to which you claim section 552.107(1) applies. You have submitted as Exhibit "D" documents which Southland marked "confidential" and provided to the commission in connection with the enforcement action. You state that although the commission does not claim any exception to disclosure of these documents, Southland may have an interest in the documents. Therefore, pursuant to section 552.305 of the Government Code, this office informed Southland of the request and of its obligation to claim the exceptions to disclosure it believes apply to the requested information, together with its arguments as to why it believes the claimed exceptions apply. Southland did not claim any exception to disclosure of these documents or otherwise respond. Therefore, the commission may not withhold the information submitted to this office for review as Exhibit "D."

Section 552.107(1) of the Government Code excepts information if:

(1) 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

In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. We conclude that two of the submitted documents are attorney-client communications that fall within the section 552.107(1) exception to disclosure. Another submitted document indicates on its face that it contains notes from a settlement conference at which all parties were present. As the majority of these notes relate only what the opposing party said at that conference, they do not fall within the section 552.107(1) exception to disclosure. A governmental body bears the burden of explaining how particular information is protected under section 552.107(1). Open Records Decision No. 462 (1987) at 1. Although you claim that this document contains attorney work product that is excepted from disclosure under section 552.107(1), attorney work product is excepted under section 552.103(a), which you have not claimed, not section 552.107(1). Open Records Decision Nos. 575 (1990) at 2, 574 (1990) at 6. Therefore, the commission has not established how the remainder of the document falls within the section 552.107(1) exception and consequently may not withhold this document. The final document in Exhibit "C" also appears to contain notes from a meeting. You inform us that the meeting was an earlier settlement conference and the notes were taken by one of the commission's technical employees, not an attorney. We cannot determine from the face of the document what, if anything, is an attorney-client communication. We conclude that the commission has failed to establish how the section 552.107 exception applies to this document. Therefore, the commission may not withhold this document from required public disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should 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,



Stacy E. Sallee
Assistant Attorney General
Open Government Section

SES/KHG/rho

Ref.: ID# 33652

Enclosures: Marked documents

cc: Mr. Walt D. Roper
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(w/o enclosures)