



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 24, 1997

Ms. Kathleen A. Holden  
Assistant Vice President/Counsel  
Texas Guaranteed Student Loan Corporation  
P.O. Box 201725  
Austin, Texas 78720-1725

OR97-0921

Dear Ms. Holden:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106098.

The Texas Guaranteed Student Loan Corporation (the "corporation") received a request for the personnel files of two of its employees and copies of all complaints filed against one of these employees, including any internal correspondence. You advise us that most of the information has been released to the requestor. However, you claim that the information submitted is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 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. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* Moreover, section 552.107(1) does not protect from disclosure factual information compiled by a governmental attorney acting in the capacity of an investigator rather than a legal advisor. Open Records Decision No. 462 (1987). We find that portions of the December 23, 1996 memorandum may be withheld under section 552.107 because it contains an attorney's legal opinion. However, the "Background" and "Investigation" portions of the memorandum are not excepted from disclosure and must be released because they consist of factual information compiled by an attorney acting as an investigator. Additionally, you must release the MS-mail message that

was released in response to a prior open records request. See Open Records Decision No. 630 (1994) at 4 (when a governmental body voluntarily discloses information to a third party, the attorney-client privilege is waived).

Next, we address your section 552.101 claim as to the remainder of the submitted information. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." You cite to *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), and argue that the corporation's internal investigation of complaints should be excepted from public disclosure. *Ellen* involved an investigative file concerning a sexual harassment complaint; the complaint at issue does not allege sexual harassment. Thus, *Ellen* does not apply here. Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Under common-law privacy, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. There is no information in the submitted investigative file that implicates the privacy interest of any individual. See Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). The corporation must release the investigative file at issue.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

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Ref.: ID# 106098

Enclosures: Submitted documents

cc: Mr. Stephan Bolton  
Facsimile No. 512/249-3444  
(w/o enclosures)