



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 14, 1998

Mr. Miles K. Risley
Senior Assistant City Attorney
Legal Department
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR98-0119

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111589.

The City of Victoria (the "city") received a request for information concerning a certain investigation. You assert that a letter from the City Attorney to the City Manager dated May 16, 1997, is excepted from required public disclosure based on section 552.101 of the Government Code as a privileged attorney-client communication.

You assert that section 552.101 of the Government Code incorporates the Texas Rules of Civil Evidence. However, the attorney-client privilege is specifically covered in section 552.107(1) of the Government Code. *See* Open Records Decision No. 574 (1990). Section 552.107(1) of the Government Code 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 Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

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 at 5; 462 (1987) at 13-14. Thus, section 552.107(1) applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990).

We have reviewed the document at issue. We believe the document is a privileged attorney-client communication. Accordingly, the city may withhold the May 16, 1997, document from the requestor based on section 552.107(1) of the Government Code.

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 records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/ch

Ref.: ID# 111589

Enclosures: Submitted documents

cc: Mr. Stanley A. Rains, Jr.
Rains Insurance Agency
P.O. Box 3581
Victoria, Texas 77903
(w/o enclosures)