



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 14, 1998

Ms. Gail L. Allan
Assistant General Counsel
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

OR98-0122

Dear Ms. Allan:

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# 111781.

The Texas Water Development Board (the "board") received a request from a former employee for "all information related to the 'investigation' of my conduct that was carried out . . . including any e-mails or other information that was requested by [two specified individuals] as a result of the completion of that official investigation." In response to the request, you submitted to this office for review the information at issue. You assert that the board has "assembled" certain information "relevant to the individual's request and also protected from public disclosure by one or more of the exceptions to public disclosure set out in Chapter 552." You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions and arguments you have raised and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that some specified information is protected by the informer's privilege under section 552.101 of the Government Code. The informer's privilege protects the identity of persons who report violations of the law to officials having the duty of enforcing particular laws. *See Roviario v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege does not, however, apply to information that does not describe illegal conduct. Open Records Decision No. 515 (1988) at 5. For example, the informer's privilege aspect of section 552.101 does not protect memoranda and written statements complaining of a fellow employee's work performance when those statements do not reveal the violation of specific laws to the officials charged with enforcing those laws. *See Open Records Decision Nos. 579 (1990) at 8, 515 (1988) at 3.* We have reviewed the submitted documents and conclude that the informer's privilege does not apply in this instance.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. Section 552.107(1) excepts information from disclosure if:

[I]t 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.

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. Open Records Decision No. 574 (1990) at 5. Section 552.107(1) does not protect purely factual information unless the factual information constitutes a confidence that the client related to the attorney. *See id.* at 5. When invoking this exception, the governmental body bears the burden of explaining how the particular information requested constitutes either a client confidence or a communication of legal advice or opinion. *See, e.g.*, Open Records Decision No. 589 (1991). You have not shown how this section applies to the documents within Exhibit 1. Therefore, we conclude that these records may not be withheld pursuant to section 552.107(1).

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large initial "S" and "H".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 111781

Enclosures: Submitted documents

cc: Mr. Bruce Wood
17808 Worley Drive
Pflugerville, Texas 78660-5108
(w/o enclosures)