



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 20, 1998

Ms. Sara Hardner Leon  
Powell, Chance & Leon  
808 West Avenue  
Austin, Texas 78701-2208

OR98-0986

Dear Ms. Leon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114427.

The Hubbard Independent School District (the "district"), which you represent, received a request for several categories of information concerning the investigation and resignation of a former employee. You received the request from an investigator with the State Board for Educator Certification. Although you indicate that you have released much of the requested information, the district has also attempted to clarify the request and reach an informal resolution about disclosure of the requested information. Gov't Code 552.222; Open Records Decision No. 333 (1982) (ten-day deadline does not begin to run during the time that the requestor and the governmental body attempt to resolve access to the records informally and there is legitimate confusion as to the scope of the request). You state, however, that you have been unable to reach an agreement concerning the release of some of the information. You have submitted this information for our review and have marked it as Exhibits E and F. You assert that this information is protected by the attorney-client privilege. You explain that you have removed all personally-identifiable student information in the submitted documents as required by the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and section 552.114 of the Government Code. Open Records Decision No. 634 (1995). We have considered the exceptions you claim and have reviewed the documents at issue.

We first point out that information may be transferred between governmental agencies which are subject to the Open Records Act without destroying the confidential nature of the information. Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are grounded in the well settled policy of the state that state agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989). These decisions also recognize that a release

to a state agency is not a release to the public for purposes of Government Code section 552.007, which prohibits the selective disclosure of information, and Government Code section 552.352, which provides criminal penalties for the release of information considered to be confidential under the act. *See id.* Thus, you may transfer the requested information to the State Board for Educator Certification without waiving the district's ability to raise its discretionary exceptions in the future. Since you raise exceptions to disclosure, however, we will consider whether they apply.

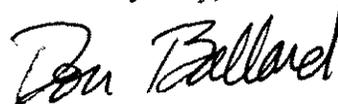
You argue that the submitted information may be withheld under sections 552.101 and 552.107 of the Government Code because it is protected attorney-client information. The attorney-client privilege is properly claimed under section 552.107. Open Records Decision No. 574 (1990) at 2. Section 552.107(1) 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.*

You explain that Exhibit E reflects an investigation into an employee grievance conducted by an attorney for the district. We have previously stated that where a law firm acts as a fact finder and not in the capacity of legal advisor, section 552.107 is not applicable. Open Records Decision No. 462 (1987). Furthermore, where an investigation is conducted by attorneys and reflects their skills, but the report therefrom is purely factual and contains no legal advice or opinion, the report is not excepted by the attorney-client privilege. Open Records Decision No. 230 (1979). We have reviewed Exhibits E and F and conclude that portions are protected by section 552.107. We have marked the portions that may be withheld.

You also claim that the documents may be withheld according to the "work product privilege." This office has ruled that if a governmental body wishes to withhold attorney work product, the proper exception to raise is either section 552.103 or section 552.111. Open Records Decision No. 647 (1996). We announced in Open Records Decision No. 647 (1996) that a governmental body must show that the work product (1) was created for trial or in anticipation of litigation under the test articulated in *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993), and (2) consists of or tends to reveal the thought processes of an attorney. *Id.* at 5. The district has not made either of these demonstrations. Accordingly, the district may not withhold the requested information from disclosure based on section 552.111.

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,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 114427

Enclosures: Marked documents

cc: Mr. Jack W. Stamps  
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(w/o enclosures)