



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 28, 1998

Ms. Gail Allan  
Texas Water Development Board  
P.O. Box 13231  
1700 No. Congress Avenue  
Austin, Texas 78711-3231

OR98-2524

Dear Ms. Allan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 119129.

The Texas Water Development Board received a request for information, "regarding the Holmwood Subdivision and ANRA project." You contend that pursuant to section 552.107(1) of the Government Code, the attorney-client privilege, certain portions of some of the submitted documents are exempt from disclosure and all of certain other submitted documents are exempt from disclosure.

We assume that you have released all of the requested information except the documents that you submitted to this office. We have considered the exception you claim and have reviewed the documents at issue. 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(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. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107(1) 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.* Even though the content of a communication might be confidential, the fact of a communication is ordinarily not excepted from disclosure. Open Records Decision No. 212 (1978).

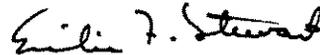
We note that you claim that some of the information is protected as attorney "work product." This office has ruled that if a governmental body wishes to withhold attorney work

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. You have not made either of these demonstrations. Accordingly, you may not withhold the requested information from disclosure based on section 552.111. As you have not claimed section 552.103, we do not consider as valid this assertion of the work product exemption.

You may withhold documents 1, 2, 3, 4, and 6 in their entirety and the highlighted portions of documents 5, 6, 7, and 10 under section 552.107(1). You may not withhold the highlighted portions of documents 8 and 9.

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,



Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

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Ref: ID# 119129

Enclosures: Submitted documents

cc: Ms. Vickie Stewart  
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415 W. Gibson  
Jasper, Texas 75951  
(w/o enclosures)