



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1998

Mr. Gregory T. Simpson
Director, Employment & Administration
Texas General Land Office
1700 North Congress Avenue
Austin, Texas 78711-1495

OR98-3298

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 121495.

The General Land Office (the "GLO") received a request for information concerning Special Award #1 and Special Award #2 located in San Patricio, Nueces, and Aransas Counties, Texas. You submit to this office copies of all documents that you wish to withhold from the requestor. You state that all of the other requested information is being released. You assert that the documents you wish to withhold are exempt from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

You raise section 552.107 to protect from disclosure all of the submitted documents that you wish to withhold. Section 552.107(1) excepts information from 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.

Gov't Code § 552.107. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, factual information or requests for legal advice communicated by the client to the attorney and legal advice or opinion rendered by the attorney to the client. *Id.* at 7-8. Section 552.107(1) does not, however, protect purely factual information. *Id.* We find that the memo dated October 1, 1998 reveals the client's confidential communications, and the handwritten notes contain the opinion of an attorney. Therefore, these documents may be withheld under

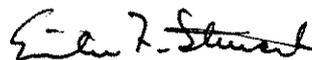
section 552.107. However, the correspondence between the City of Aransas Pass and the GLO contains neither the client's confidential communications nor the advice or opinion of an attorney and must be released to the requestor.

In your letter of October 30, 1998, you also raise as exceptions to disclosure of the requested information sections 552.101, 552.104, 552.105, and 552.111 of the Government Code. If an agency does not establish how and why an exception applies to requested information, there is no basis on which to pronounce it protected. Open Records Decision No. 363 (1983). The Open Records Act places on a governmental body the burden of establishing why and how an exception applies to requested information. Open Records Decision Nos. 542 (1990); 532 (1989); 515 (1988); 252 (1980); 216 (1978); 197 (1978); 158 (1977); 150 (1977). You have not indicated how section 552.101 may apply to except the requested information and it is not evident from the face of the documents that you submit to this office. Inasmuch as the GLO is not seeking bids or purchasing real property, neither section 552.104 nor 552.105 apply to except the requested information. Finally, because section 552.111 generally protects only advice, opinion, and recommendations, any protection under section 552.111 will usually be no greater or less than the protection offered under section 552.107. *See* Open Records Decision No. 574 at 2 (1990).

The GLO has not met its burden of establishing why and how sections 552.101, 552.104, 552.105, and 552.111 apply to except from disclosure the requested information. The GLO has, however, met its burden of establishing the application of section 552.107 to the memo dated October 1, 1998 and to the handwritten notes submitted to this office and may withhold these documents. The GLO must release the correspondence between the City of Aransas Pass and the GLO.

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

EFS\nc

Ref: ID# 121495

Enclosures: Submitted documents

cc: Mr. James Whitten
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(w/o enclosures)