



March 5, 1999

Ms. Deena J. Wallace
Assistant General Counsel
The Texas A&M University System
John B. Connally Building
301 Tarrow, 6th Floor
College Station, Texas 77840-7896

OR99-0631

Dear Ms. Wallace:

You ask this office to reconsider our ruling in Open Records Letter No. 98-2892 (1998). Your request for reconsideration was assigned ID# 122536.

The Texas A&M University System (the "system") received two requests for information relating to its dog cloning project. The system released 359 documents in response to these requests. You claimed that the remaining responsive information, submitted as exhibits B, B-1, and C, was excepted from disclosure. You argued that exhibits B and B-1 were excepted from disclosure under section 552.101 of the Government Code. You argued that exhibit C was excepted from disclosure under section 552.107 of the Government Code. In Open Records Letter No. 98-2892 (1998), we concluded that exhibits B and B-1 were excepted from disclosure under section 552.101, but that exhibit C was not excepted from disclosure under section 552.107 because you waived your section 552.107 claim by failing to timely raise it. You ask us to reconsider our conclusion that you waived your section 552.107 claim for exhibit C.

You have provided us with the following dates that are relevant to our consideration of your section 552.107 claim. The system received the first request for information on August 25, 1998. On September 8, 1998, you raised section 552.101 for exhibits B and B-1. Exhibit C, a piece of e-mail correspondence created on September 15, 1998, did not exist when the system received the first request for information. The system received the second request for information on September 16, 1998. You notified us on September 22, 1998 that exhibits

B and B-1 were also responsive to the second request, and you reiterated your position that exhibits B and B-1 were excepted from disclosure under section 552.101. On September 30, 1998, you submitted exhibit C to this office, indicated that exhibit C was responsive to the second request for information, and invoked section 552.107 for exhibit C.

The Open Records Act applies only to information in existence and does not require a governmental body to prepare new information in response to a request for information. Open Records Decision Nos. 605 (1992), 572 (1990). Because exhibit C did not exist when the system received the first request for information, we agree that exhibit C is not responsive to the first request for information. Upon receiving the second request for information on September 16, 1998, you identified exhibit C as responsive to the second request. On the tenth business day after you received the second request for information, you submitted exhibit C to this office and invoked section 552.107. We agree that you complied with the time limitation in section 552.301 of the Government Code and did not waive your section 552.107 claim. Therefore, we will consider whether exhibit C is excepted from disclosure pursuant to section 552.107 of the Government Code.

Section 552.107(1) of the Government Code excepts from disclosure 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. ORD 574 at 5. Section 552.107(1) does not except purely factual information from disclosure, nor does it protect information gathered by an attorney as a fact-finder. Open Records Decision Nos. 574 (1990), 559 (1990), 462 (1987). Having reviewed exhibit C, we find that it consists entirely of client confidences communicated to a system attorney. Therefore, the system may withhold exhibit C from disclosure pursuant to section 552.107(1). Open Records Letter No. 98-2892 (1998) is overruled only to the extent that it conflicts with this ruling.

If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 122536

Enclosures: Submitted document

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