



May 10, 1999

Mr. Eddie Martin
City Attorney's Office
City of Denton
215 East McKinney
Denton, Texas 76201

OR99-1260

Dear Mr. Martin:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 123945.

The City of Denton (the "city") received a request for information relating to Nortex Telecom's negotiations and application with the city regarding cable rights. The requestor also seeks the same information relating to CoServ's application and approval of its contract to provide gas service in the city.¹ You claim that the submitted documents are excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

You argue that portions of the documents submitted as Exhibit B are excepted from disclosure by section 552.107. You have marked the information you seek to withhold. 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

¹Since the city has only submitted information relating to Nortex Telecom, we presume that information responsive to the second portion of the request has been released. *See* Gov't Code § 552.301.

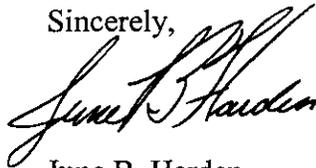
3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

You explain that Exhibit B consists of communications between the city attorney and various city officials concerning the possible issuance of a cable television franchise. After reviewing the documents, we agree that some of the highlighted portions reveal client confidences, attorney advice or opinion. Therefore, you may withhold this information under section 552.107. We have marked the information in Exhibit B that is not excepted from disclosure under section 552.107 and must, therefore, be released.

You also assert that portions of Exhibit C may be withheld under section 552.111. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993). Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portion of internal memoranda. Open Records Decision No. 559 (1990). We have reviewed the documents at issue and agree that some of the information you have marked in Exhibit C may be withheld under section 552.111. We have marked the information in Exhibit C that must be released.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 123945

encl. Marked documents

cc: Mr. Paul Buchanan
Attorney at Law
320 Purcey Street
Fort Worth, Texas 76102
(w/o enclosures)