



October 14, 1999

Ms. Katherine Minter Cary
Assistant Attorney General
Public Information coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-2930

Dear Ms. Cary:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128042.

The Office of the Attorney General received a request for “a copy of the letter that Michael Tigar wrote to the attorney general’s office in response to the letters giving members of the Walter Umphrey team in the tobacco case permission to talk to the FBI.” You claim that the requested document is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code.

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 the requested correspondence “is from Mr. Michael Tigar, attorney for the attorneys who represented the State, under legally binding agreement, in the tobacco litigation under former Attorney General Morales.

Tigar, as an attorney representing the attorneys representing the State, has an agency relationship between himself and the State's attorneys." You argue that the letter contains both confidential client communications and legal advice. We have reviewed the submitted information and agree that it consists of confidential communications and attorney advice or opinion. *Cf. Markowski v. City of Marlin*, 940 S.W.2d 720, 726 (Tex. App.—Waco 1997, writ denied) ("a governmental body has as much right as an individual to consult with its attorney without risking the disclosure of important confidential information"); *Burnett v. State*, 642 S.W.2d 765, 767 (Tex. Crim. App. 1982) ("the privilege as to communications between attorney and client extends to 'persons who are the media of communication between him and the client'"). The requested information may be withheld under section 552.107(1). *See* Tex. R. Civ. Evid. 503(b)(1).

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.

Sincerely,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 128042

Encl. Submitted document

cc: Mr. Clay Robison
Houston Chronicle
1005 Congress Avenue, Suite 770
Austin, Texas 78701
(w/o enclosures)