



November 8, 1999

Ms. Kristi DeCluitt
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR99-3149

Dear Ms. DeCluitt:

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# 129543.

The City of College Station (the "city") received a request for numerous documents relating to a city landfill project.¹ You originally claimed that the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. However, in subsequent correspondence submitted to our office, you indicated that the city no longer reasonably anticipates litigation and therefore you have withdrawn your section 552.103 claim. Accordingly, we have considered only the exception you claim under Government Code section 552.107 and have reviewed the submitted information.

You contend that two memoranda contained in Exhibit B-1 and the entirety of Exhibit B-3 are excepted from disclosure under section 552.107. 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. Open Records Decision No. 574 at 5 (1990). 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). We have reviewed the submitted information and agree that certain information in the documents consists of the advice or opinions of attorneys representing the Brazos Valley Solid Waste Management Agency ("BVSWMA"), an entity owned by the cities of College Station and Bryan. The two memoranda in Exhibit B-1 may be withheld pursuant to Government Code

¹You refer to this request as PKWMM Request No. 4.

section 552.107.

You also assert that Exhibit B-3 is excepted from disclosure in its entirety by section 552.107. The first two pages of Exhibit B-3 consist of a memorandum which, in main part, is a factual recounting and documentation of a call made to a third party by an attorney representing BVSWMA. We also note that one page of Exhibit B-3, which we have marked, is comprised of notes taken in relation to the phone call. Section 552.107(1) does not except from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memoranda sent. Open Records Decision No. 574 at 5 (1990). Additionally, two of the pages appear to be the work product of a third party, Peach Creek. Neither the notes nor the work product is excepted from disclosure by section 552.107. However, we have indicated portions of the memorandum which may be withheld pursuant to Government Code section 552.107. The remaining documents in Exhibit B-3 may also be withheld.

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/nc

Ref: ID# 129543

Encl. Submitted documents

cc: Mr. C. J. Kling
Payne, Watson, Kling, Miller & Malechek, P.C.
P.O. Box 6900
Bryan, Texas 77805-6900
(w/o enclosures)