



December 29, 1999

Ms. Theda Lambert
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR99-3817

Dear Ms. Lambert:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130929.

The Texas Department of Licensing and Regulation ("TDLR") received a request for all records pertaining to two complaints filed with the Texas Natural Resource Conservation Commission ("TNRCC"), which records were transferred to the TDLR "pursuant to HB 2155, effective 9/1/97 (transfer of Water Well Driller program from TNRCC to TDLR)." You state that most of the requested records will be made available to the requestor. You contend, however, that 56 pages of documents are excepted from required public disclosure pursuant to sections 552.107(1) and 552.111 of the Government Code.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and client confidences. *Id.* *See also* Open Records Decision No. 589 (1991). All of the records at issue memorialize the substance of telephone conversations between a TNRCC attorney and other individuals, who appear to be outside parties, rather than TNRCC employees. You have not explained, nor is it apparent to this office, how such conversations come within the attorney-client privilege. We conclude, therefore, that you have not met your burden of demonstrating the applicability of section 552.107(1) to the records at issue and that the TDLR may not withhold the requested records pursuant to the attorney-client privilege.

You also seek to withhold the records at issue as “attorney work product” pursuant to section 552.111 of the Government Code. The first requirement that must be met to consider information “attorney work product” is that the information must have been created for trial or in anticipation of litigation. You explain that both of the complaints filed with the TNRCC “went through the administrative hearing process and are now closed.” Our review of the documents confirm that the records pertained to administrative hearings at the time they were created.

The second requirement that must be met is that the information “consists of or tends to reveal the thought processes of an attorney in the civil litigation process.” Open Records Decision No. 647 at 4 (1996). Although the attorney work product privilege protects information that reveals the mental processes, conclusions, and legal theories of the attorney, it generally does not extend to a neutral recital of facts obtained by the attorney. *Id.* and authorities cited therein. As noted above, the records at issue memorialize the substance of telephone conversations between a TNRCC attorney and other parties. After reviewing the memoranda at issue, these documents appear to consist primarily of a neutral recital of facts as to the substance of those telephone conversations. You have not explained how the information at issue consists of or tends to reveal an attorney’s mental processes, conclusions, and legal theories. *Id.* at 5. Accordingly, we conclude that the TDLR may not withhold any of the records at issue as attorney work product pursuant to section 552.111 of the Government Code. Consequently, the records you submitted to this office must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

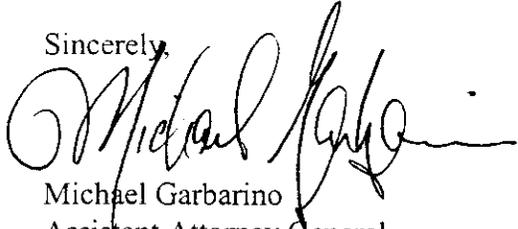
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/RWP/jc

Ref: ID# 130929

Encl. Submitted documents

cc: Mr. Jonathan H. Hull
Reagan, Burrus, Dierksen, Lamon & Bluntzer
P.O. Box 31160
New Braunfels, Texas 76131-1160
(w/o enclosures)