OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

June 24, 2002

Ms. Carol Longoria
Office of the General Counsel
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2981

OR2002-3430

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164732.

The University of Texas at Tyler (the "university") received a request for copies of correspondence between university administrators amongst themselves or with the Office of the General Counsel of the University of Texas System concerning "The Patriot" newspaper or the student publication section of the most recent "Handbook of Operating Procedures." The requestor also seeks copies of correspondence between "UT administrators and/or faculty concerning the employment or contract renewal of [a specified] journalism lecturer and Patriot adviser." You state that you will release some responsive information to the requestor without additional delay. You claim, however, that the highlighted portions of the submitted information are excepted from disclosure pursuant to sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that some of the highlighted information concerning a Mr. Leo Barnes pertains to a legal matter that is unrelated to the scope of the present request. Based on our review of your representation and this information, we agree and find that this information is not responsive to the request. Accordingly, we need not address whether this particular information is subject to disclosure under the Public Information Act.

You claim that the remaining highlighted information is excepted from disclosure pursuant to section 552.107 of the Government Code. Section 552.107(1) protects information encompassed by the attorney-client privilege. We note that in instances where an attorney

represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's confidences made to the attorney. *See* Open Records Decision No. 574 (1990). Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. 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 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. *See* Open Records Decision No. 574 at 5 (1990). Based on our review of your arguments and the remaining highlighted information, we agree that this information constitutes either a client confidence or an attorney's legal advice or opinion provided in furtherance of the rendition of legal services to the client. Accordingly, the university may withhold the remaining highlighted information from disclosure pursuant to section 552.107. However, the university must release the portions of the information that are not highlighted to the requestor. Because we base our ruling on section 552.107 of the Government Code, we need not address your remaining claimed exceptions to disclosure.

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).

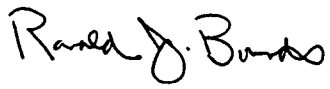
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 164732

Enc. Submitted documents

cc: Ms. Melissa Tresner
Patriot Editor
University of Texas at Tyler
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Tyler, Texas 75799
(w/o enclosures)