OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

September 13, 2002

Ms. Deborah C. Hiser
Hilgers & Watkins
98 San Jacinto Boulevard, Suite 1300
Austin, Texas 78701

OR2002-5128

Dear Ms. Hiser:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168560.

The El Paso Community Mental Health/Mental Retardation Center (the "center"), which you represent, received a written request for, among other things, all "memoranda, correspondence, and internal notes regarding the conducting of POCO meetings." You state that some responsive information has been released to the requestor. You contend, however, that the remaining information coming within the scope of the request, a representative sample of which you submitted to this office, is excepted from required public disclosure pursuant to sections 552.107 and 552.111 of the Government Code.[1]

Section 552.107(1) of the Government Code protects information coming within 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(1) excepts from public disclosure only "privileged information," that is, information that reflects either client confidences 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). You explain that the submitted communications are between the center's legal counsel and the center's employees and representatives, and that the communications were made in the furtherance of the rendition of professional legal services to the center. Given these representations and

[1] In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

our review of the submitted communications, we agree that these documents constitute privileged attorney-client communications, and thus, may be withheld in their entirety under section 552.107(1) of the Government Code.[2]

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.

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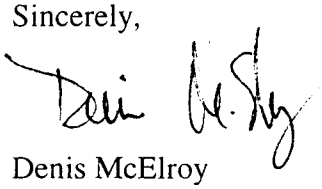
[2] Because we resolve your request under section 552.107(1), we need not address the applicability of section 552.111 of the Government Code to the submitted records.

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,



Denis McElroy
Assistant Attorney General
Open Records Division

DCM/RWP/sdk

Ref: ID# 168560

Enc: Submitted documents

c: Mr. Michael Spurlock
Advocacy, Inc.
300 East Main Street, Suite 205
El Paso, Texas 79901
(w/o enclosures)