OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 8, 2003

Mr. Duncan R. Fox
Deputy General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2003-0150

Dear Mr. Fox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177450.

The Texas Department of Public Safety (the "Department") received a request for "all documents . . . relating to any disciplinary action taken or complaints against Trooper Hughes." You state your intent to release responsive documents to the requestor that do not fall within the purview of information excepted from disclosure under section 552.107 of the Government Code. We have reviewed the information you submitted and considered the exception you claim.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. *See generally* 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 confidential attorney-client communications. *Id.* This office recently refined this position and determined that when a governmental body demonstrates that a communication is protected by the attorney-client privilege as defined by rule 503 of the Texas Rules of Evidence, the entire communication is excepted from disclosure under section 552.107. *See* Open Records Decision No. 676 at 5 (2002). A governmental body that raises section 552.107 bears the burden of explaining how the particular information requested is protected by the attorney-client privilege. *See id.* at 6; *see also Strong v. State*, 773 S.W.2d 543, 552 (Tex. Crim. App. 1989) (burden of establishing attorney-client privilege is on party asserting it).

In order to withhold attorney-client privileged information from disclosure, a governmental body must: (1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the document containing privileged information is excepted under section 552.107 of the Government Code provided the client has not waived the privilege.

In this instance, you inform us that attorneys within the Department prepared the submitted documents for the purpose of rendering professional legal services to the Department. In addition, the documents reveal the attorneys communicated the information to the Department's general counsel and a limited number of others within the Department. Furthermore, the documents indicate the attorneys' intent to prevent the disclosure of the content to third parties. Based on your arguments and our review of the submitted documents, we conclude that this information is protected by the attorney-client privilege; therefore, the Department may withhold the submitted information under section 552.107 of the Government Code.

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,

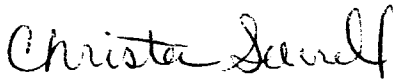
at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 177450

Enc: Submitted documents

c: Ms. Tami Wahl
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(w/o enclosures)