OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 28, 2003

Mr. John T. Reynolds
Corporate Counsel
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR2003-0578

Dear Mr. Reynolds:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175730.

The San Antonio Water System ("SAWS") received a request for information relating to the "Lumbermen's Evans Road Tract, Evans Road/North Loop Venture project as shown on COSA POADP #452 and the Lumbermen's Cibolo Canyon Resort Community project as shown on COSA MDP #727 and on any subdivision plans for either of these projects." You state that you are releasing some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.107 of the Government Code.[1] We have considered the exception you claim and reviewed the submitted information.

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. *Id.* at 5; *see also* Open Records Decision No. 676 (2002)

[1]You also raise section 552.101 in conjunction with the attorney-client privilege. Section 552.107, not section 552.101, is the appropriate section to raise in order to assert the attorney-client privilege. *See* Open Records Decision 676 (2002).

(section 552.107(1) excepts a client government body's communications as defined by Texas Rule of Evidence 503).

You state, and the submitted information shows, that the responsive memorandum represents a communication between SAWS's corporate counsel and SAWS's general counsel and director of resource protection and compliance that provides legal advice and legal opinion "to guide the recipient of the memorandum in the conduct of his duties." Based on your representation and our review of this document, we agree that the submitted memorandum is excepted in its entirety from disclosure under section 552.107 as a privileged communication between a client and an attorney made for the purpose of facilitating the rendition of professional legal services.

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).

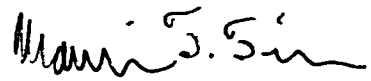
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If 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,



Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 175735

Enc: Submitted documents

c: Mr. Ricardo D. Gonzales
Miranda & Boyaki
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(w/o enclosures)