



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 30, 1994

Ms. Helen K. Bright  
The University of Texas System  
Office of General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2981

OR94-861

Dear Ms. Bright:

You ask whether certain information is subject to public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24101.

The University of Texas System received a request for documents maintained by the University of Texas Health Science Center at San Antonio ("UTHSC-SA"), concerning a certain physician and the circumstances and events surrounding her termination. You state that you have released all documents within your possession except a certain letter between the faculty and the Texas State Board of Medical Examiners ("Attachment B") and all records concerning the particular physician maintained by legal counsel for UTHSC-SA ("Attachment C"). You assert that such documents are excepted from required public disclosure pursuant to sections 552.101, 552.103, 552.107, and 552.111 of the Government Code in conjunction with the Medical Practice Act, V.T.C.S. art. 4495b. We shall first address your assertions with regard to Attachment B.

Attachment B consists of a single letter written by a professor and program director associated with the residency program at UTHSC-SA to the Texas State Board of Medical Examiners. You assert that this letter is excepted from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with sections 5.06(c) and (d) of the Medical Practice Act, V.T.C.S. art. 4495b. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 thus incorporates the doctrines of other statutory provisions that make specified documents confidential. You cite section 5.06(c), article 4495b V.T.C.S. as the specific statutory provision which deems the requested information confidential. Section 5.06(c) provides that:

[A] report made under this section is confidential and is not subject to disclosure under the open records law. . . .

Furthermore,

[a]ny medical peer review committee in this state, any physician licensed to practice medicine or otherwise lawfully practicing medicine in this state, any physician engaged in graduate medical education or training, or any medical student shall report relevant information to the board relating to the acts of any physician in this state if, in the opinion of the medical peer review committee, physician, or medical student, the physician poses a continuing threat to the public welfare through the practice of medicine. . . .

V.T.C.S art. 4495, § 5.06(d). Thus we conclude that if the physician who authored the letter was acting in accordance with the aforementioned provisions, his letter must be withheld from required public disclosure under the Government Code. Because we have reached this conclusion, we will not address your further assertions of confidentiality with regard to Attachment B.

We now turn to Attachment C, which consists of correspondence forwarded by the executive director of institutional services with UTHSC-SA to the university's general counsel. You assert that the correspondence is excepted from required public disclosure pursuant to sections 552.101, 552.107, and 552.111 of the Government Code. With regard to this assertion, you suggest that section 552.101 acting in tandem with section 552.107 excepts the correspondence.

Section 552.107(1) of the Government Code excepts from required public disclosure:

information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

In Open Records Decision No. 574 (1990), this office considered the scope of the statutory predecessor to section 552.107, former V.T.C.S. art. 6252-17a, § 3(a)(7). We concluded that the statutory predecessor protected only privileged material under rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct. Further, such information consists only of factual information and requests for legal advice communicated by a client and legal advice or opinion rendered by the attorney to the client or to an associated attorney in furtherance of the rendition of legal services to the client. Open Records Decision No. 574, at 5; *see also* Open Records Decision No. 589 (1991). Therefore, a governmental body invoking section 552.107 of the Government Code must explain the following:

(1) that the communication is a confidential client communication or a communication of legal advice or opinion; and

(2) that the requested information is a communication, intended to be confidential, between the client and the client's lawyer, or their representatives, for the purpose of facilitating the rendition of professional legal service. . . .

*See generally* Open Records Decision No. 574. We have reviewed the documents that you have submitted for our consideration and conclude that such documents consist of factual information communicated in requests for legal advice by UTHSC-SA to the office of the general counsel. Moreover, such documents also consist of communications of legal advice or opinion and that such advice or opinion was intended to remain confidential "for the purpose of facilitating the rendition of professional legal services." Accordingly such documents may be withheld from required public disclosure under the act. Because we have concluded that the documents contained in Attachment C may be withheld under section 552.107(1), we decline to address your additional assertions of confidentiality pursuant to section 552.111 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Toya Cirica Cook  
Assistant Attorney General  
Open Government Section

TCC/LRD/rho

Ref.: ID# 24101

Enclosures: Submitted documents

cc: Mr. Daniel P. Neelon, Esq., L.C.  
1777 N.E. Loop 410, Suite 600  
San Antonio, Texas 78217  
(w/o enclosures)