



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1995

Mr. Robert E. Shaddock
General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 E. 11th Street
Austin, Texas 78701-2483

OR95-038

Dear Mr. Shaddock:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29372.

The Texas Department of Transportation (the "department") received a request for "a copy of [the requestor's] files regarding case #117." You inform us that the department will release some information, but that the department seeks to withhold from required public disclosure two documents that you say are arguably responsive to the request based on section 552.107(1) of the Government Code.

Section 552.107(1) states that information is excepted from required public disclosure if

it is 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.

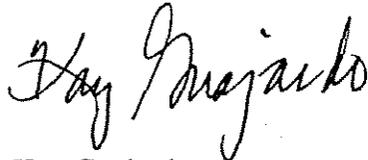
Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for

confidential communication; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574, at 5; 462 (1987) at 13-14. Furthermore, this exception applies only to information that reveals attorney advice and opinion or client confidences. See Open Records Decision No. 574.

With the exception of the heading and the closing, the two documents at issue contain attorney advice and opinion or client confidences that is within the attorney-client privilege. We, therefore, conclude that the department may withhold this privileged material from required public disclosure based on section 552.107(1). We have marked the documents accordingly.

We are resolving this matter with this 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,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 29372

Enclosures: Submitted documents

cc: Mr. Carlos Gutierrez
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Austin, Texas 78753
(w/o enclosures)