



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 29, 1995

Mr. Richard D. Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701

OR95-155

Dear Mr. Monroe:

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# 29735.

The Texas Department of Transportation (the "department") received an open records request for "the complete unabridged copy of the complaint file" regarding a particular sexual harassment complaint. You state that the department has released to the requestor all responsive records except for two documents that you contend come under the protection of section 552.101 of the Government Code.

You specifically contend that the records at issue are excepted from public disclosure pursuant to the attorney-client privilege. Although you raise the attorney-client privilege in the context of section 552.101, this privilege is more properly deemed to be an aspect of section 552.107(1) of the Government Code, which protects "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." See Open Records Decision No. 574 (1990) (copy enclosed). 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.*

You characterize the records at issue as being "in the nature of legal advice from an attorney in [the department's] Office of General Counsel to the [department] staff regarding a legal question" and therefore contend that the records are protected by the

attorney-client privilege. We agree. We have marked the portions of the memoranda that constitute either legal advice or privileged communications that the department may withhold pursuant to section 552.107(1). The remaining portions of the documents, however, must be released.

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 should 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,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref.: ID# 29735

Enclosures: Open Records Decision No. 574
Marked documents

cc: Ms. Terese Pérez-Wisely
International Union Representative
AFSCME, AFL-CIO
815 Brazos, Suite 500
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(w/o enclosures)