



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1995

Mr. Richard J. Ybarra
Assistant Attorney General
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR95-1127

Dear Mr. Ybarra:

Your predecessor asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We assigned your request ID# 24801.

The Office of the Attorney General (the "OAG") has received a request for information in its possession relating to General Motors Corporation. Specifically, the requestor seeks "all public information relating to investigations of General Motors Corporation by the Office of the Attorney General that were opened, conducted, or closed since January 1, 1991." You advise us that the OAG has released most of the requested information to the requestor. You seek, however, to withhold the remaining information, which you have submitted to us for review, and claim that sections 552.101, 552.103, 552.107, 552.108, 552.110, and 552.111 of the Government Code except it from required public disclosure.

Pursuant to section 552.305 of the Government Code, we have notified the party whose proprietary interests are implicated by this request. In response, General Motors Corporation has advised us that it does not seek trade secret protection for the requested information. When an agency or company fails to provide relevant information regarding factors necessary to make a section 552.110 claim, a governmental body has no basis for withholding the information under section 552.110. See Open Records Decision No. 402 (1983) at 2. Neither you nor General Motors Corporation has provided relevant information regarding factors necessary to make a section 552.110 claim. Accordingly, we conclude that you may not withhold any of the requested information under section 552.110 of the Government Code.

You also claim that section 552.111 of the Government Code excepts some of the requested information from required public disclosure. Section 552.111 excepts an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the section 552.111 exception and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. This office also held, however, that section 552.111 does not except purely factual information. Open Records Decision No. 615 (1993).

We have examined the information submitted to us for review. We conclude that some of the submitted information constitutes advice, recommendations, and opinions reflecting the OAG's policymaking processes. Some of the submitted information, however, is purely factual and may not be withheld under section 552.111. We have marked the information that you may withhold under section 552.111 of the Government Code.¹

Next, we address your assertion that section 552.107 of the Government Code excepts some of the requested information from required public disclosure. Section 552.107(1) protects information that reveals client confidences to an attorney, including facts and requests for legal advice, or that reveals the attorney's legal advice. See Open Records Decision No. 574 (1990). Section 552.107(1), however, does not protect purely factual information. *Id.*

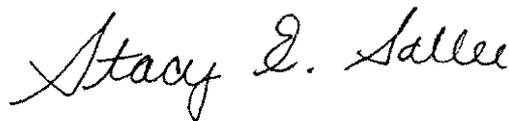
The information for which you seek protection under section 552.107(1) of the Government Code relates to a contemplated action that the OAG's consumer protection division has authority to bring on behalf of the state pursuant to the Deceptive Trade Practices-Consumer Protection Act. See Bus. & Comm. Code, subch. E. The submitted information includes communications among attorneys representing the state or communications to the OAG's clients. We have examined the information for which you seek section 552.107(1) protection. We conclude that some of the submitted information reveals client confidences to an attorney, including facts and requests for legal advice, or reveals an attorney's legal advice. Some of the submitted information, however, does not reveal client confidences to an attorney or the attorney's legal advice, e.g., pleadings, court opinions, and National Highway Traffic Safety Administration filings. In addition, some of the submitted information is purely factual in nature. We have marked the information that you may withhold under section 552.107(1) of the Government Code. We note that much of the information excepted from disclosure under section 552.107, that is, attorney legal advice or opinion, is marked as protected under section 552.111 as explained above.

¹We note that our markings are in blue and black ink and are indicated by post-it notes attached to the marked documents.

Finally, we address your contention that sections 552.103(a) and 552.108 of the Government Code except some of the requested information from required public disclosure. Although you assert these exceptions, you do not explain how they apply. You are responsible for submitting in writing the reasons you believe the requested information is excepted from disclosure. Under the Open Records Act, all information held by governmental bodies is open to the public unless it is within a specific exception to disclosure. The custodian of records has the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). If a governmental body does not claim an exception or fails to show how it applies to the records, it will ordinarily waive the exception unless the information is deemed confidential by the act. See Attorney General Opinion JM-672 (1987). Because you have not explained the applicability of sections 552.103(a) and 552.108, we conclude that you may not withhold any of the requested information under these exceptions. Except for information excepted under sections 552.107(1), and 552.111 of the Government Code, as indicated above, you must release the requested information in its entirety.

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,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

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Enclosures: Marked documents

Ref.: ID# 24801

cc: Mr. Stephen Gardner
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(w/o enclosures)