



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 10, 1995

Mr. Alexis A. Walter, III
City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR95-1209

Dear Mr. Walter:

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# 32377.

The City of Bryan (the "city") received a request for any and all written communications between the city and private law firms or the Office of the Attorney General, including enclosures, relating to development of a site for a permanent branch campus of Blinn College to be located in Bryan. You have provided copies of five documents comprised of correspondence between city staff, a private attorney whose firm was retained by the city to perform "bond counsel" duties for it, and the Attorney General's office.¹ You claim that the requested information is not subject to disclosure under section 552.107 of the Government Code.²

¹The requestor alleges that he has had access to all or part of the submitted correspondence. This does not appear to be the case as the dates of letters to which the requestor claims to have had access and those here are not the same. Additionally, the requestor claims that any information that could be protected under the attorney-client privilege has been waived by the city's release of such information to Blinn College. This office cannot resolve factual disputes and must rely on the facts alleged or upon the facts that are discernible from the documents submitted for inspection. Open Records Decision No. 552 (1990) at 4. Thus, for the purposes of this ruling, we assume that any privilege attached to the submitted documents has been preserved. This ruling does not address whether release of the requested documents by the city to Blinn College would constitute a waiver of the attorney-client privilege.

²In your initial brief of March 16, 1995, you claimed that certain attachments to a submitted letter were excepted from disclosure pursuant to section 552.106 of the Government Code. Subsequent to

Section 552.107(1) excepts from 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.

Although section 552.107(1) excepts 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 communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 (1990) at 5, 462 (1987) at 13-14 (explaining scope of attorney-client privilege). Furthermore, section 552.107(1) does not protect information which does not contain legal advice or opinion, or reveal client confidences. Open Records Decision No. 574 (1990) at 3, 5. Thus, information may be withheld under section 552.107(1) only to the extent that it documents confidences of a governmental representative to its attorney or reveals the attorney's legal advice and opinions. Open Records Decision Nos. 589 (1991), 574 (1990). The majority of the marked portions of the submitted documents appear to consist of attorney-client confidences and attorneys' legal advice and opinions. You may withhold this information from required public disclosure.

A small portion of the marked information, however, consists of factual information, describing in little detail the attached minutes and resolutions relating to the branch site of Blinn College. Furthermore, you have informed us that you have released the attachments themselves. We fail to see how release of descriptions of these documents would reveal any attorney-client privilege or attorney advice. Finally, you may not withhold the letter from Ben Brooks to Jim Thomassen of the Office of the Attorney General, because you have not explained, nor do we believe, that a confidential attorney-client relationship exists between the city attorney and the Office of the Attorney General.³ Therefore, you must release this information.

(Footnote continued)

original brief, however, you released the attachments to the requestor. Therefore, we need not address your arguments under section 552.106.

³We understand that the Public Finance Division of the Office of the Attorney General generally treats letters such as this as public records and has in fact released similar letters in response to open records requests.

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 Records Division

LRD/LMM/rho

Ref.: ID# 32377

Enclosures: Marked documents

cc: Mr. Melvyn L. Meer
2510 Oak Circle
Bryan, Texas 77802
(w/o enclosures)