



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 5, 1996

Mr. George E. Seay, III  
Locke Purnell Rain Harrell, P.C.  
2200 Ross Avenue, Suite 2200  
Dallas, Texas 75201-6776

OR96-0878

Dear Mr. Seay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39413.

The Texas Turnpike Authority (the "TTA") received an open records request for twelve categories of information. You are making available most of the information but claim that Request No. 10, which seeks documentation relating to the Agreement for Special Fiber Optic Backbone by and between C&H Fiber Optic, Inc. ("C&H") and TTA (the "Agreement"), is excepted from required public disclosure under sections 552.101, 552.107, and 552.111 of the Government Code.<sup>1</sup>

You raise sections 552.101 and 552.107 for information which you claim should be excepted under the attorney-client privilege. The attorney-client privilege is properly considered under section 552.107(1). Open Records Decision No. 574 (1990) at 2.

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<sup>1</sup>TTA originally objected to the release of information contained in Request Nos. 5 and 8. However, with regard to Request No. 5, the requestor has clarified her request to seek only production of DNT RFP 206, which TTA has no objection to releasing. With regard to Request No. 8, which seeks documentation "related to any dispute between C&H or [TTA] and Metropolitan Fiber Services," you state that you are unaware of any dispute between TTA or C&H and Metropolitan Fiber Services and, therefore, no responsive documents are available. You further state that MFS Network Technologies, Inc. had at one time made an open records request to TTA and, by copy of that request, informed the requestor of the distinction between Metropolitan Fiber Services and MFS Network Technologies, Inc. The requestor has not informed TTA whether it desires any information related to MFS Network Technologies, Inc. A governmental body must make a good faith effort to relate a request to information which it holds, Open Records Decision No. 561 (1990), and should seek clarification if it cannot reasonably understand a request. Open Records Decision No. 304 (1982). As you claim that no "dispute" has ever existed between TTA or C&H and Metropolitan Fiber Services and the requestor has not expressed an interest in information related to MFS Network Technologies, Inc., TTA has met its duty under the Open Records Act and need not respond to Request No. 8 at this time.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107(1) protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

You also raise section 552.111 of the Government Code, which excepts "[a]n 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 concluded that section 552.111 excepts from required public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.*

You claim that Documents A1 - A14, drafts of the Agreement and correspondence between the attorneys representing C&H and TTA, are excepted from required public disclosure by sections 552.107(1) and 552.111. You assert that the drafts of the Agreement may be withheld from required public disclosure in their entirety under section 552.111 because they are drafts. It is generally true that a draft of a document that has been released or is intended for release in final form may qualify for exception under section 552.111, because the draft necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document, *see* Open Records Decision No. 559 (1990) at 2. However, it is apparent that Documents A1, A3, A11, and A12, and a portion of A10 have been released to C&H and, consequently, neither section 552.107(1) nor section 552.111 except these documents from disclosure. Open Records Decision Nos. 574 (1990) (section 552.107 does not apply to communications that are not confidential), 435 (1986) (section 552.111 waived by release of information to public). You may not withhold from the requestor Documents A1, A3, A11, and A12, and the portion of A10 which were sent to C&H. However, unless Documents A2, A4 - A9, A13, and A14, and the remaining portion of A10, have been released to C&H or to some other third party, you may withhold this information under section 552.111.

You claim that Documents B1 - B23, communications from TTA officials and TTA General Counsel relating to the Agreement or communications transmitted from GTE and its counsel to TTA or C&H, are excepted from required public disclosure by

section 552.107(1).<sup>2</sup> We find that Documents B1 - B14, B16, and B19 - B23 reveal the client's confidential communications or the attorney's legal opinion or advice and, therefore, may be withheld under section 552.107(1). However, Documents B15, B17, and B18, contain communications between TTA and third parties and, consequently, are not confidential and may not be withheld under this exception. We have tagged the correspondence which must be disclosed to the requestor. The remainder of Documents B1 - B23 may be withheld under section 552.107(1).

You claim that Documents C1 - C8, interoffice memoranda related to the Agreement, are excepted from required public disclosure under sections 552.107(1) and 552.111. We find that Documents C1 - C3 and C8 may be withheld under section 552.107(1) because they reveal the client's confidential communications to its attorney. Documents C4 - C7, however, are purely factual and may not be withheld under either section 552.107(1) or section 552.111. We have tagged Documents C4 - C7, which must be released to the requestor.

Finally, you claim that Documents D1 - D12,<sup>3</sup> communications from TTA to TTA General Counsel and the personal notes of TTA General Counsel relating to the Agreement, are excepted from required public disclosure under section 552.107(1). We agree and find that Documents D1 - D12 reveal the client's confidential communications or the attorney's legal opinion or advice and, therefore, may be withheld under section 552.107(1).

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/rho

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<sup>2</sup>Although you reference threatened litigation, you do not specifically raise section 552.103(a), the "litigation exception," nor do you explain how the documents relate to any anticipated litigation. Consequently, we do not consider section 552.103. See Gov't Code § 552.301(a), (b)(1).

<sup>3</sup>Although your brief only references Documents D1 - D8, there are actually 12 exhibits in this category of information.

Ref: ID# 39413

Enclosures: Tagged documents

cc: Ms. Kathleen E. Palter  
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(w/o enclosures)