



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 25, 1996

Ms. Judith Monaco Porras
General Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR96-1008

Dear Ms. Porras:

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# 31568.

The General Services Commission (the "commission") received a request for "a copy of a letter written and sent in January of 1994, to Jorge Vega of the Attorney General's Office discussing the possible termination of W. Scott McCollough as the Assistant Attorney General that represented the General Services Commission in telecommunications matter." You assert that the requested letter is a confidential attorney-client communication that is excepted from required public disclosure under section 552.107(1) of the Government Code.

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

¹We note that the open records laws, including Government Code section 552.107(1), were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request was made. *Id.*

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.

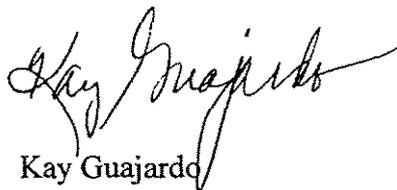
Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent 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 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.

Thus, this exception protects the essence of the confidential relationship between attorney and client from the disclosure requirements of the Open Records Act. Open Records Decision No. 574 (1990) at 5. Consequently, section 552.107(1) applies to information that reveals attorney advice and opinion or client confidences. See Open Records Decision No. 574 (1990).

We agree that the requested letter contains confidential communications from the commission, as client, to its attorney, the Office of the Attorney General. We, therefore, conclude that the commission may withhold such communications from required public disclosure pursuant to section 552.107(1) of the Government Code. We note that section 552.107(1) does not apply to the heading or the closing of the letter.

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

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 31568

Enclosure: Submitted document

cc: Mr. W. Scott McCollough
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(w/o enclosure)