



Office of the Attorney General

State of Texas

January 10, 1997

DAN MORALES
ATTORNEY GENERAL

Ms. Heidi Maher
Staff Attorney
TNRCC Legal Division
P.O. Box 13087
Austin, Texas 78711-3087

OR97-0043

Dear Ms. Maher:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102917.

The Texas Natural Resource Conservation Commission (the "commission") received a request for various records, some of which apparently were provided to the requestor. The requestor also sought "all evidence, testimonies, documents, and other information used in the investigation and subsequent evaluation" of a matter that resulted in the termination of an employee.¹ You contend that records responsive to this request are protected from disclosure pursuant to section 552.107(1) of the Government Code. You have submitted to this office for review representative samples of the documents that are at issue.²

Section 552.107(1) excepts from disclosure communications that reveal client confidences or the attorney's legal opinion, advice, or recommendation. Open Records Decision Nos. 589 (1991) at 1, 574 (1990) at 3, 462 (1987) at 9-11. However, section 552.107(1) does not protect from disclosure factual information compiled by a governmental attorney acting in the capacity of an investigator rather than a legal advisor. Open Records Decision No. 462 (1987). Attachment B, the investigation report, is not excepted from disclosure because it consists of factual information compiled by attorneys

¹The requestor asked for the information pursuant to a personnel or procedures manual. TNRCC is treating this as a request made under the Texas Open Records Act. We do not consider in this ruling any records access provision of a personnel or procedures manual.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

acting as investigators. We agree that a portion of Attachment C, consisting of an attorney's notes, is protected from disclosure pursuant to section 552.107(1) because it contains an attorney's legal opinion. We have marked the portion of Exhibit C that may be withheld from disclosure. The remaining portions of Attachment C may not be withheld from disclosure.

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.³ If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 102917

Enclosures: Marked documents

cc: Mr. Charles F. Spiekerman, Jr.

³Please note that we do not address in this letter what effect, if any, that section 467.104 of the Government Code might have upon the exceptions in chapter 552 of the Government Code. We recommend that you seek legislative guidance on this issue.