



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 11, 1997

Ms. Susan G. Spinks  
Assistant General Counsel  
The Texas A&M University System  
John B. Connally Building  
301 Tarrow, 6th Floor  
College Station, Texas 77843-1230

OR97-1576

Dear Ms. Spinks:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106982.

Texas A&M University (the "University") received a request for three categories of information directed to or from University staff, faculty and counsel, specifically regarding one faculty member. You inform us that the University has gathered the responsive records and will make much of these files available to the requestor. However, you assert that several documents are excepted from required public disclosure based on section 552.107(1) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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

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 Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

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 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. Section 552.107(1) does not protect purely factual information. Open Records Decision No. 574 (1990). Moreover, since section 552.107(1) does not ordinarily afford blanket protection, the governmental body asserting this exception must clearly mark or otherwise identify the information that it seeks to withhold either as confidential communications or the attorney's legal advice or opinions. Furthermore, we note that the attorney-client privilege is limited to communications with those governmental representatives who fit within the "control group" as discussed by the Texas Supreme Court in *National Tank v. Brotherton*, 851 S.W.2d 193, 197-200 (Tex. 1993). After reviewing the submitted records, we find that the individual making or receiving most of these statements does not fit within such a "control group;" therefore, we conclude that the majority of the submitted records may not be withheld under section 552.107(1). However, we note that some information, which we have marked, 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 any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Sam Haddad". The signature is written in black ink and is positioned above the typed name and title.

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref: ID# 106982

Enclosures: Marked documents

cc: Mr. Ty Clevenger  
1201 Harvey Road #181  
College Station, Texas 77840  
(w/o enclosures)