



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 6, 1998

Mr. David R. Gipson  
Assistant General Counsel  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR98-0047

Dear Mr. Gipson:

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# 111395.

The Texas Department of Agriculture (the "department") received a request for information relating to a public grain warehouse licensed by the department and grain transactions at that warehouse. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that most of the documents at issue constitute attorney work product and should be excepted from disclosure under section 552.111. A governmental body may withhold attorney work product from disclosure under section 552.111 if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the documents at issue were created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. Open Records Decision No. 647 (1996) at 4. The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories.

You state that the documents that you have marked as work product were created in anticipation of litigation against Vista Trading Company ("Vista"). We have reviewed the documents and note that the content of the documents indicates that they were created in anticipation of the department's litigation against Vista. It is also clear that most of the documents reflect the attorney's mental processes, conclusions and legal theories. However, we note that facts acquired by an attorney are not protected under the work product doctrine. *Owens-Corning Fiberglas v. Caldwell*, 818 S.W.2d 749, 750 n.2 (Tex.1991); Open Records Decision 647 (1996) at 4. Thus, we conclude that, except for the information we have marked, the department may withhold these documents from disclosure under section 552.111 as attorney work product.

The department also contends that one document is excepted from disclosure under section 552.107 of the Government Code. Section 552.107(1) excepts from disclosure 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. Client communications to the attorney regarding the subject matter of the representation are privileged. *Id.* at 3. After reviewing the document at issue, we agree that the document may be withheld from disclosure under section 552.107(1).

Finally, you assert that some of the requested information is confidential by law. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The department regulates the licensure and operation of certain grain warehouses in Texas. Agric. Code § 14.003. You state that the information withheld by the department in this request is made confidential by section 14.003(d) of the Agriculture Code. This section provides that

(d) The following information prepared by the department in the course of its regulatory authority under this subchapter or required to be submitted to the department in accordance with the department's administration of this subchapter is confidential and not subject to public disclosure:

(1) inspection reports containing information regarding grain inventory;

(2) financial information provided to the department to establish net worth for purposes of licensure.

Agric. Code § 14.003(d). You state that the information withheld by the department is related to grain inventory, was obtained through department inspections, or was submitted to the department by Robstown Grain to establish net worth for purposes of licensure. After reviewing the documents at issue, we agree that the information you have marked is confidential under section 14.003(d) and must be withheld.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/alg

Ref.: ID# 111395

Enclosures: Submitted documents

cc: Mr. Christopher H. Hall  
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