



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 26, 1998

Mr. Todd Ward
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
City Hall
Dallas, Texas 75201

OR98-0805

Dear Mr. Ward:

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# 113512.

The Dallas Police Department (the "department") received a request for copies of any roll call training bulletins, legal bulletins, and the standard operating procedure training bulletins of the department that address the offense of Failure to Identify under section 38.02 of the Texas Penal Code. You claim that the requested information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107 excepts information from 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.

Gov't Code § 552.107. 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. *Id.* at 5. Section 552.107(1) does not protect purely factual information. *Id.*

You inform this office that the submitted information consisting of roll call training bulletins and legal bulletins was communicated by a governmental attorney acting as a legal advisor and is protected as a client confidence. We note, however, 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). Because we find that these bulletins have been communicated to individuals within the department who do not fit within such a "control group," we conclude the submitted bulletins may not be withheld under section 552.107(1).

Section 552.108, the "law enforcement exception," provides in part:

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Upon review of the submitted documents and your arguments against disclosure, we conclude you have not demonstrated how release of these internal records would interfere with law enforcement or prosecution. *Cf.* Open Records Decision No.531 (1989) (detailed guidelines regarding police department's use of force policy excepted under predecessor to section 552.108, but not those portions of procedures which restate generally known common law rules, constitutional limitations, or Penal Code provisions). Therefore, you may not withhold the requested information under section 552.108, and thus, it must be released to the requestor.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/rho

Ref.: ID# 113512

Enclosures: Submitted documents

cc: Mr. Charles B. Garrett
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(w/o enclosures)