



February 18, 1999

Mr. J. Robert Giddings
The University of Texas System
Office of General counsel
201 West Seventh Street
Austin, Texas 78701-4462

OR99-0493

Dear Mr. Giddings

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# 122177.

The University of Texas System (the "system") received a request for information relating to a specific sexual harassment investigation. You indicated that you have released some of the responsive records to the requestor. You explain, however, that the system is withholding educational records in accordance with prior rulings from this office. 20 U.S.C. § 1232g (federal Family Educational Rights and Privacy Act of 1974 ("FERPA")); Gov't Code § 552.114; *see* Open Records Decision No. 634 (1995) ("An educational institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a 'student record,' insofar as the 'student record' is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.")

You also contend, that the remaining responsive information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered your arguments and have reviewed the submitted documents.

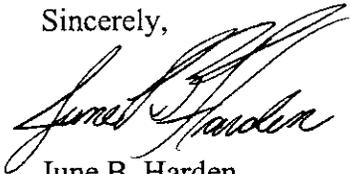
First you contend that the submitted records may be withheld under section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure 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. *Id.* at 5. When communications from attorney to client do not reveal the

client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We do not believe that the system has established that the submitted documents are protected under the attorney-client privilege. Therefore, the system may not withhold the submitted documents under section 552.107.

You also claim that the submitted documents may be withheld according to the "work product privilege" under section 552.111. We announced in Open Records Decision No. 647 (1996) that a governmental body must show that the work product (1) was created for trial or in anticipation of litigation under the test articulated in *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993) and (2) consists of or tends to reveal the thought processes of an attorney. Open Records Decision No. 647 at 5 (1996). The system has not met its burden under the *National Union* test. Accordingly, the system may not withhold the requested information from disclosure as work product. The documents must, therefore, be released.

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.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 122177

Enclosures: Submitted documents

cc: Mr. Rob Addy
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(w/o enclosures)