



September 13, 1999

Ms. Susanna K. Holt
Assistant Attorney General
Executive Administration
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR99-2565

Dear Ms. Holt:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127274.

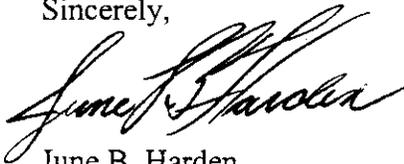
The Office of the Attorney General (the "OAG") received a request for information related to Attorney General Opinion JC-0059. The requestor also seeks copies of certain OAG policies and procedures. Although you state that you have released some of the responsive information, you claim that the submitted documents are excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted materials.

Initially, you claim that some of the submitted documents are excepted from disclosure under section 552.103. The purpose of section 552.103 is to protect a governmental body's position in litigation by forcing parties to obtain information relating to the litigation through the discovery process. Open Records Decision No. 551 (1990). A governmental body that is a party to pending litigation has discretion to determine whether it should claim section 552.103 for information related to the litigation. *See id.*; Open Records Decision No. 511 (1988). You claim that some of the submitted documents are related to pending civil litigation and should, therefore, be excepted from disclosure under section 552.103. We note, however, that the litigation to which you refer is between the Funeral Services Commission and its former Executive Director. The OAG is not a party to this litigation. Furthermore, you have not demonstrated that the OAG reasonably anticipates being made a party to this litigation. *See* Open Records Decision No. 452 at 4 (1986) (more than "mere conjecture" required to invoke litigation exception). Consequently, the documents at issue may not be withheld under this exception.

You also argue that most of the submitted documents 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.* After reviewing the documents at issue, we agree that communications between attorneys of the OAG which are related to those attorneys' requests for or rendition of legal advice, necessarily reveal the opinion, advice and recommendations of those attorneys. Therefore, most of the information you have marked may be withheld pursuant to section 552.107 of the Government Code. We note, however, that some of the submitted information is purely factual and may not be withheld under this exception. Furthermore, the OAG may not withhold this factual information under section 552.111. Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 at 4-5 (1993). We have marked the documents accordingly.

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# 127274

Encl. Marked documents

cc: Mr. Tim N. Sims
806 West Avenue, Suite 201
Austin, Texas 78701
(w/o enclosures)