



December 10, 1999

Mr. John Steiner, Division Chief
Law Department
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR99-3583

Dear Mr. Steiner:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 130368.

The City of Austin (the "city") received a request for two categories of information pertaining to the "Solid waste or Anti-Litter Fees." In response to the request, you submit to this office for review the information at issue. You state that the City will make available to the requestor documents responsive to the second category of information and some information responsive to the first category of the request. You assert, however, that the submitted documents are excepted from required public disclosure under section 552.107(1) of the Government Code. We have considered the exception you raised and reviewed the submitted information.

At the outset, we note that the submitted records, contain a memorandum dated June 18, 1996, that we have tagged, which the requestor contends has already been released to him. In fact, the requestor has submitted a brief in support of his open records request and included a copy of the memorandum.¹ You have not provided this office sufficient information about the circumstances of the release of the memorandum to determine whether it was actually an involuntary disclosure. *See* Tex. Rule Civ. Evid.

¹In his brief to our office, the requestor also makes certain other arguments concerning the records at issue and the city's representations. This situation raises questions of fact, and this office is unable to resolve questions of fact through the opinion process. Open Records Decision Nos. 554 (1990), 552 (1990).

503(b); *Granada Corporation v. Honorable First Court of Appeals*, 844 S.W.2d 223, 226 (Tex. 1992) (inadvertent production is distinguishable from involuntary production). Since it appears from the records that the information has already been released to the requestor, the June 18, 1996 memorandum may not be withheld from the requestor at this time.² See Gov't Code § 552.007 (prohibiting selective disclosure of information to public).

As for the remaining information, which has not been released to the requestor, we next address your claimed exception. Section 552.107(1) protects from disclosure information that reveals client confidences to an attorney or that reveals the attorney's legal advice, opinion, and recommendation. See Open Records Decision No. 574 (1990). Where an attorney represents a governmental entity, the attorney-client privilege protects an attorney's legal advice and confidential attorney-client communications. *Id.* In addition, we agree that a draft document may be withheld from disclosure because a draft necessarily reflects the attorney's recommendation for the final form and content of the letter. See Tex. R. Civ. Evid. 503(b)(1), 503(a)(5) (under section 552.107, communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of rendition of professional legal services). However, section 552.107(1) does not protect purely factual information. *Id.*

You represent that the requested information "includes a legal opinion from the City of Austin Law Department to the Solid Waste Services Department, preliminary draft of the opinion with attorney's notes written in the margin, and a memo between two staff attorneys regarding the opinion." Except for the memorandum which has been released to the requestor, we agree that most of the information at issue consists of client confidences and attorney advice and opinion. Therefore, you may withhold the marked information from disclosure pursuant to section 552.107(1), except for the June 18, 1996 memorandum.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

²Furthermore, we note that a release to one requestor results in a selective disclosure, thus requiring the city to release the information at issue to all other requestors. Gov't Code §§ 552.007(a), 552.223; Open Record Decision Nos. 490 (1988) (governmental body may not practice selective disclosure).

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 130368

Encl. Submitted documents

cc: Mr. William H. Morea, III
6112 Anemone Cove
Austin, Texas 78759
(w/o enclosures)