



January 26, 2000

Mr. Michael J. Cosentino
City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77801

OR2000-0259

Dear Mr. Cosentino:

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# 131564.

The City of Bryan (the “city”) received a request for, among other things, “all . . . legal analyses . . . prepared by the City staff or its consultants with respect to” a particular proposed commercial development.¹ You have submitted to this office as responsive to the request a representative sample of the types of documents you seek to withhold, which you contend are excepted from disclosure under section 552.107(1) of the Government Code.²

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney’s legal advice and client confidences. *Id.* In Open Records Decision No. 574, this office conclude that

¹You state that all other requested information will be made available to the requestor.

²In reaching our conclusion here, we assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

[i]n general, the attorney's mere documentation of calls made, meetings attended, or memos sent is not protected under [the statutory predecessor to section 552.107(1)], if no notes revealing the attorney's legal advice or the client's confidences are included. Such documentation simply does not embody attorney-client communication.

Open Records Decision No. 574 at 7. *See also* Open Records Decision No. 589 (1991). You have submitted to this office for review three types of documents as being representative of the types of information the city seeks to withhold pursuant to section 552.107(1). Exhibit B consists of the city's outside attorney's analysis of various draft agreements. This document contains the attorney's legal opinion and advice to the city, and as such may be withheld in its entirety pursuant to section 552.107(1). Exhibit C is an attorney billing statement, which does not appear to contain either legal advice or opinion or client confidences.³ Accordingly, Exhibit C is not excepted from public disclosure and therefore must be released. Finally, Exhibit D is an e-mail communication in which the city attorney requests a meeting with a city employee regarding proposed amendments to a draft agreement. As such, this communication does not contain a client confidence or an attorney's legal advice and thus may not be withheld pursuant to the attorney-client privilege.

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 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

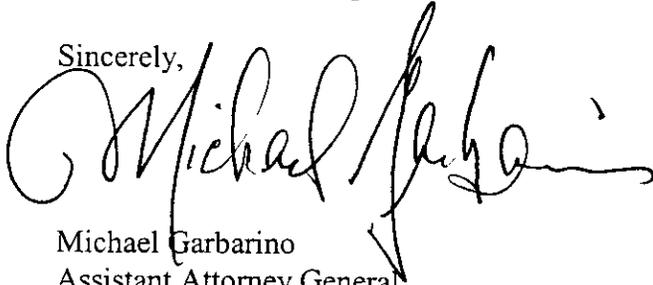
³We note that you have not identified any specific information in this document as coming within the attorney-client privilege. *See* Gov't Code § 552.022(a)(16).

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, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/RWP/jc

Ref.: ID# 131564

Encl: Submitted documents

cc: Ms. Diana L. Granger
Attorney at Law
816 Congress Avenue, Suite 1900
Austin, Texas 78701
(w/o enclosures)