



February 15, 2000

Ms. Katherine Minter Cary
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2000-0532

Dear Ms. Cary:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132324.

The Administrative Law Division of the Attorney General's Office (the "ALD") received a request for all documents submitted to the board's counsel within the last five years concerning board members and/or staff of the Texas Board of Professional Engineers.¹ You state that you have released some of the responsive information to the requestor. However, you claim that the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 22A of article 3271a of the Texas Civil Statutes. Alternatively, you claim that the information at issue is excepted from disclosure under section 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107(1) excepts from disclosure 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(1) 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. Open Records Decision No. 574 at 5 (1990). When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107(1) protects them only to the extent that such

¹The original request received by the ALD was for documents regarding "alleged complaints and/or concerns being made on board members and/or staff." However, the requestor has since narrowed his request as stated above.

communications reveal the attorney's legal opinion or advice. Open Records Decision No. 574 at 3 (1990). In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

The documents you wish to withhold under section 552.107 consist of a complaint and supporting documentation regarding allegations of violations of the Texas Engineering Practice Act. These documents were initially submitted to the Texas Board of Professional Engineers (the "Board"). You state that the Board's investigation of this complaint is currently ongoing and that therefore the Board must keep the submitted documents confidential under 22A of article 3271a of the Texas Civil Statutes.² You explain that the Board forwarded these documents to its attorney at the ALD in order to obtain legal services and advice. We find that the submitted documents constitute attorney-client communications that are excepted under section 552.107(1). Accordingly, the ALD may withhold the submitted documents. Because section 552.107 is dispositive of this matter, we do not address your other arguments.

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).

²Section 22A of article 3271a provides as follows:

- (a) the Board shall keep an information file about each complaint filed with the Board relating to a license holder.
- (b) If a written complaint is filed with the board relating to a license holder, the Board, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notification would jeopardize an undercover investigation.
- (c) The Board shall adopt rules that permit the Board to receive and investigate confidential complaints against license holders or any other person who may have violated this Act. The Board shall maintain the confidentiality of the complaint during the investigation of the complaint.

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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJ/nc

Ref: ID# 132324

Encl. Submitted documents

cc: Mr. Danny Perkins
Texas Board of Professional Engineers
P.O. Drawer 18329
Austin, Texas 78760-8329
(w/o enclosures)