



February 22, 2000

Mr. Eric Calhoun  
Lawson & Fields P.C.  
5323 Spring Valley Road, Suite 300  
Dallas, Texas 73240

OR2000-0636

Dear Mr. Calhoun:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132689.

The Houston Police Officer's Pension System (the "system") which you represent, received a request for the minutes of all system meetings through December 15, 1999; all communications exchanged between October 1, 1999 and December 31, 1999 between the system and any actuary doing work for the system; letters from attorneys to the system Board of Trustees advising members not to speak on a named topic; and all documents related to an investigation into a specified purchase. You claim that the requestor withdrew his request for some of this information. You have supplied three letters which you contend are responsive to the request, but excepted from disclosure under sections 552.101, 552.103 and 552.107 of the Government Code. We assume that information responsive to this written request that was not provided to this office for review was either provided to the requestor or that the requestor withdrew his request for that information. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.107(1) of the Government Code excepts from disclosure information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct. This exception does not apply to all client information held by a governmental body's attorney; rather, it excepts from public disclosure only "privileged information," i.e.

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<sup>1</sup>You have asserted sections 552.101 and 552.107 for certain responsive information which you contend is protected by the attorney-client privilege. This privilege is properly raised under section 552.107. Therefore section 552.101 is not addressed in this decision. As section 552.107 is dispositive of this request, section 552.103 is not addressed in this decision.

communications made to the attorney in confidence and in furtherance of rendering professional services or that reveal the attorney's legal opinion or advice. Open Records Decision Nos. 589 at 1(1991), 574 at 3 (1990), 462 at 9-11(1987). Information gathered by an attorney as a fact-finder, purely factual information, and the factual recounting of events including the documentation of calls made, meetings attended, and memos sent, are not excepted from disclosure by section 552.107(1). Open Records Decision No. 574 (1990) Section 552.107 may except from disclosure notes in an attorney's client file if they contain confidences of the client or reveal the opinions, advice, or recommendations that have been made or will be made to the client or associated attorneys. Open Records Decision No. 574 at 6 (1990). From our review of the submitted letters, we conclude that they consist of protected advice and opinion of counsel and therefore may be withheld under section 552.107(1) of the Government Code.

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.

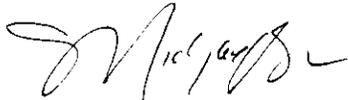
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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 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 Jay Burns", with a stylized flourish at the end.

Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/nc

Ref: ID# 132689

Encl: Submitted documents

cc: Mr. John Lawson  
9597 Jones Road, #241  
Houston, Texas 77065  
(w/o enclosures)