



April 17, 2000

Ms. Ruth H. Soucy  
Deputy General Counsel  
Open Government  
Comptroller of Public Accounts  
P. O. Box 13528  
Austin, Texas 78711-3528

OR2000-1505

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134519.

The Comptroller of Public Accounts (the "comptroller") received a request for copies of written communications pertaining to the *e*-Texas initiative. The requestor also wishes to inspect related service and consultant contracts valued under \$20,000. You state that you have released some of the requested information to the requestor. However, you claim that the client confidences, attorney advice and opinion, and communications between comptroller attorneys which are contained in the written communications and the drafts of the consultant contracts are excepted from disclosure under section 552.107(1) of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

Section 552.107(1) excepts from disclosure information that an attorney cannot disclose because of a duty to his client. Under rule 503(b) of the Texas Rules of Evidence, "a client

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<sup>1</sup>We assume that the "representative sample" of the consultant contracts submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 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.

has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client.” A “confidential communication” is a communication “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” 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. *Id.* Section 552.107(1) does not apply to every communication between a governmental body and its attorney. Rather, the communication must have been made in confidence in furtherance of the attorney rendering professional legal services to the government body. Consequently, a governmental body generally may withhold under section 552.107(1) only information revealing client confidences or containing legal advice or opinion. *Id.* 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 communications reveal the attorney’s legal opinion or advice. *Id.* In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See* Open Records Decision Nos. 589 (1991), 212 (1978) (even though content of a communication might be confidential, fact of a communication is ordinarily not excepted from disclosure). In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

We find that the comptroller may withhold from disclosure under section 552.107(1) the drafts of the consultant contracts and the written communications containing client confidences or an attorney’s legal opinion or advice. We have marked the documents accordingly. We note that a memo which you submitted appears to have been released to the Prospective Volunteers for e-Texas on or about November 30, 1999. When a governmental body voluntarily discloses privileged material to a third party, the attorney-client privilege is waived. *See* Open Records Decision No. 630 at 4 (1994); *but see Hart v. Gossum*, 995 S.W.2d 958 (Tex. App.—Fort Worth 1999, no. pet. h.). Therefore, this memo is public information and must be released to the requestor with the remaining information that is not protected under section 552.107(1).

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

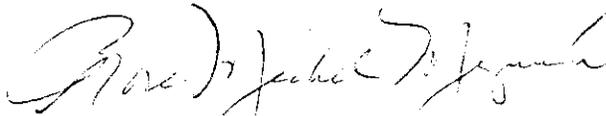
filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not 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,



Rose-Michel Munguia  
Assistant Attorney General  
Open Records Division

RMM/ch

Ref: ID# 134519

Encl. Submitted documents

cc: Mr. Juan Elizondo, Jr.  
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(w/o enclosures)