



July 10, 2000

Ms. Michelle Simpkins  
Winstead, Sechrest & Minick  
100 Congress Avenue, Suite 800  
Austin, Texas 78701

OR2000-2545

Dear Ms. Simpkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137072.

The Lost Creek Municipal Utility District (the "district"), which you represent, received a request for "copies of the following items and any related documents thereto: 1) All General and Special Meeting minutes from Jan, Feb, March and April 2000[;] 2) 1999-2000 Proposed Budget with 1<sup>st</sup> Qtr & 2<sup>nd</sup> Qtr Budget Review documents[; and] 3) All documents and correspondence relating to the Citizens Complaint letter regarding the violation of the Open Meetings Act - including those to the MUD legal advisor." The information you have submitted to this office indicates that the district has released to the requestor the information that is responsive to the request, except for a memorandum which you have submitted for our review. You assert that the memorandum is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you assert and reviewed the submitted information.

Section 552.107(1) excepts information from disclosure if it is 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 Evidence or the Texas Disciplinary Rules of Professional Conduct. *See* Gov't Code § 552.107(1). 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., communications that are made to the attorney *in confidence* and in furtherance of rendering professional legal 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(1) 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. *Id.* at 6. The memorandum at issue, addressed to the district Board of Directors from the district's legal counsel, consists of legal advice. Upon careful review of the memorandum and your arguments, we believe that you have demonstrated that the document is excepted from disclosure by section 552.107(1). Accordingly, the district may withhold the information in its entirety pursuant to section 552.107.

Because section 552.107 is dispositive, we do not address the section 552.103 and 552.111 assertions. 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.

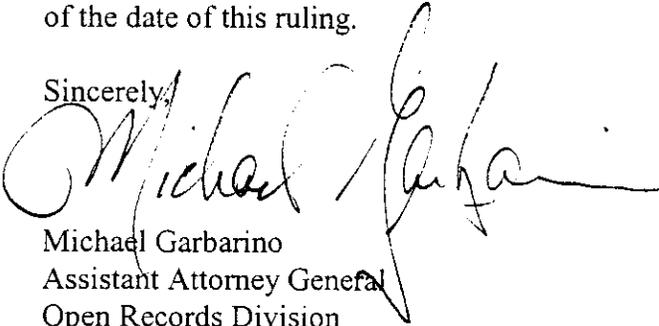
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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 Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/pr

Ref: ID# 137072

Encl. Submitted documents

cc: Ms. Nancy Naeve  
1711 Lost Creek Boulevard  
Austin, Texas 78746  
(w/o enclosures)