



November 15, 2000

Mr. Michael J. Cosentino
City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2000-4421

Dear Mr. Cosentino:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 141288.

The City of Bryan (the "city") received a request for "[t]he complete project files for the Traditions Golf Course, Hotel Conference Center, and University Ranch project in the possession of or control of Mr. Tom Coyle." You state that a portion of the responsive information has been provided to the requestor. You have provided information to this office for review identified as exhibit B, which you contend is representative of information exempted from disclosure under section 552.107 of the Government Code.¹

Section 552.107(1) exempts 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 Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

¹We 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 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.

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 (1990). Section 552.107(1) does not protect purely factual information such as the factual recounting of events or the documentation of calls made, meetings attended, or memoranda sent. *Id.* Further, when a governmental body voluntarily discloses privileged material to a third party, the attorney-client privilege is waived. 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.). Therefore, if the requestor has previously had access to the responsive information, it may not be withheld under section 552.107. You indicate that the requestor “reviewed the project file.” You must release all responsive information which has been disclosed to this requestor.

After review of the submitted information, we conclude that the handwritten comments on the pages which you have labeled B-2 through B-12, and the entire page labeled B-9 consist of an attorney’s legal advice or opinion. If neither the requestor nor any other third party has had access to this information, the city may withhold this information from disclosure 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 141288

Encl: Submitted documents

cc: Mr. Frank Thurmond
3015 Gleneagles Court
Bryan, Texas 77802
(w/o enclosures)