



February 26, 2001

Ms. Carolyn Wright
Assistant General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2001-0710

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144431.

The Texas Department of Health (the "department") received a written request for all records pertaining to a department investigation concerning possible asbestos violations. You state that most of the requested information has been released to the requestor. You contend, however, that certain other records are excepted from public disclosure pursuant to sections 552.101 and 552.107(1) of the Government Code.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice or opinion and client confidences. *Id.* After reviewing the information at issue, we conclude that most of the information constitutes either legal advice or opinion or client confidences. However, two of the e-mail communications do not contain such types of information and thus must be released to the requestor. The department may withhold the remaining communications in their entirety pursuant to section 552.107(1) of the Government Code.¹

¹Because we resolve your request under section 552.107(1), we do not address the applicability of section 552.101 of the Government Code, except to note that section 552.101 does not encompass evidentiary privileges. Open Records Decision No. 575 (1990).

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).

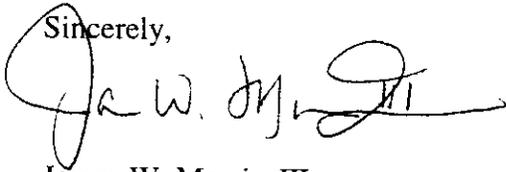
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Hadassah Schloss at 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "W" and a distinct "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/seg

Ref: ID# 144431

Encl. Submitted documents

cc: Mr. Donald H. Parish
406 East Magnolia
Angleton, Texas 77515
(w/o enclosures)