



April 2, 2001

Ms. Lyn Dean
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2001-1301

Dear Ms. Dean:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145585.

The Lower Colorado River Authority (the "LCRA") received a request for all documents pertaining to the issuance of a permit for a marina.¹ You seek to withhold some of the requested information under sections 552.107 and 552.111 of the Government Code. You state that you will release the remainder of the responsive information.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107(1) excepts from public disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts 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 at 5 (1990). Section 552.107(1) does not except purely factual information from disclosure. *Id.* Section 552.107(1) does not except from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memoranda sent. *Id.* at 5.

¹The requestor also asked the LCRA what authority it had for taking a certain action and requested that the LCRA issue a finding of fact. We note that the Public Information Act does not require a governmental body to prepare answers to questions, to do legal research, or to prepare new information in response to a request. Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 342 at 3 (1982).

²You have submitted two documents for which you have submitted redacted duplicates. You state that the unredacted portions of these documents will be released. Therefore, we apply the asserted exceptions solely to the redacted portions of these two documents.

You state that the submitted information includes correspondence between LCRA staff and attorneys that constitutes privileged information. Based on your arguments and our review of the information, we agree that portions of the submitted information constitute client confidences and attorney advice and opinion. We have marked this information, which may be withheld under section 552.107.

We next address your claim under section 552.111 with respect to the remainder of the information you seek to withhold. A governmental body may withhold attorney work product from disclosure under section 552.111 if it demonstrates that the material was (1) created for trial or in anticipation of civil litigation, and (2) consists of or tends to reveal an attorney's mental processes, conclusions, and legal theories. Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the documents at issue were created in anticipation of litigation, has two parts. A governmental body must demonstrate that (1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and (2) the party resisting discovery or release believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. Open Records Decision No. 647 at 4 (1996) (citing *National Tank v. Brotherton*, 851 S.W.2d 193, 200 (Tex. 1993)). The second requirement that must be met is that the work product "consists of or tends to reveal the thought processes of an attorney in the civil litigation process." Open Records Decision No. 647 at 4 (1996). Although the attorney work product privilege protects information that reveals the mental processes, conclusions, and legal theories of the attorney, it generally does not extend to facts obtained by the attorney. *See id.* (citing *Owens-Corning Fiberglass v. Caldwell*, 818 S.W.2d 749, 750 n.2 (Tex. 1991); *see also Leede Oil & Gas, Inc. v. McCorkle*, 789 S.W.2d 686 (Tex. App.—Houston [1st Dist.] 1990, no writ) (the attorney work product privilege does not protect memoranda prepared by an attorney that contain only a "neutral recital" of facts).

You state that some of the submitted information constitutes correspondence and notes documenting conversations between LCRA staff and attorneys relating to a permit application. You also state that some of the submitted information constitutes notes reflecting the thought processes of LCRA's attorneys. However, you do not indicate, nor is it apparent, that any of the information you seek to withhold was created for trial or in anticipation of litigation. Therefore, we find that you may not withhold any of the submitted information under section 552.111 and the work product privilege.

In summary, while you may withhold some of the submitted information under section 552.107 of the Government Code, you must release the remainder of the information.

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).

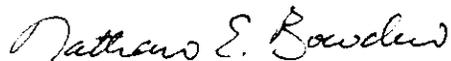
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 145585

Encl: Submitted documents

cc: Mr. Sam Payne, Sr. & Mr. Sam Payne, Jr.
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(w/o enclosures)