



April 18, 2001

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

OR2001-1530

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# 146165.

The Brushy Creek Municipal Utility District (the “district”), which you represent, received a request for documents and recordings relating to a discussion by the district’s board of directors in executive session. You state that the district has two pieces of information responsive to the request—a certified agenda and a memorandum from the district’s president to the district’s general counsel. You claim that the requested information is excepted from disclosure under sections 552.101, 552.105, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 551.104(c) of the Government Code provides that “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).” Such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). Therefore, the district must withhold the certified agenda of the closed meeting under section 552.101 in conjunction with section 551.104(c) of the Government Code. *See id.*

You also argue that a memorandum responsive to the request is excepted from disclosure under section 552.107 of the Government Code. Section 552.107(1) excepts 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 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 at 5 (1990). Section 552.107(1) does not except purely factual information from disclosure. *Id.* You state that the memorandum in question was sent to the district’s general counsel by the district “in order to seek [the general counsel’s] legal advice regarding terms and provisions which should be contained” in a proposed agreement. Based on your arguments and our review of the memorandum, we conclude that the memorandum consists of client confidences to an attorney; therefore, the district may withhold the memorandum under section 552.107 of the Government Code.

In summary, the district must withhold the certified agenda of the closed meeting under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code. Furthermore, the district may withhold the submitted memorandum under section 552.107 of the Government Code. Based on this ruling, we need not reach your remaining arguments.

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/rr

Ref: ID# 146165

Encl: Submitted documents

cc: Mr. John C. McLemore
8400 Cornerwood
Austin, Texas 78717
(w/o enclosures)