



June 7, 2001

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

OR2001-2661

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 # 148662.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received a request for all requests for public information that the requestor submitted to the district during March, 2001, and for information relating to advice or direction that officers of the district received before responding to the requests. You state that the district will allow the requestor to inspect his requests for information. You claim that the rest of the requested information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from disclosure only what rule 1.05 of the Texas Disciplinary Rules of Professional Conduct defines as "privileged information," that is, either client confidences or the attorney's legal advice or opinions. See ORD 574 at 5. Section 552.107(1) does not apply to all client information held by a governmental body's attorney. *Id.* Section 552.107(1) does not protect purely factual information. *Id.* Thus, this exception does not except from disclosure the factual recounting of events or the documentation of calls made, meetings attended, and memos sent. *Id.*

You state that the submitted documents contain confidential client communications and the advice and opinions of counsel for the district. You assert that these documents constitute privileged communications between the district and its attorneys. Based on your representations and our review of the submitted documents, we conclude that most of the information at issue is excepted from disclosure under section 552.107(1) of the Government Code. We have marked the documents that the district may withhold under section 552.107(1). As we are able to make this determination under section 552.107(1), we

need not address your arguments under section 552.111. *See* ORD 574 at 2 (explaining that because statutory predecessor to section 552.111 generally protects only advice, opinion, and recommendations, any protection from public disclosure under statutory predecessor to section 552.111 usually will be neither more nor less than the protection offered under statutory predecessor to section 552.107(1)). Thus, the remaining information must be released to the requestor.

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).

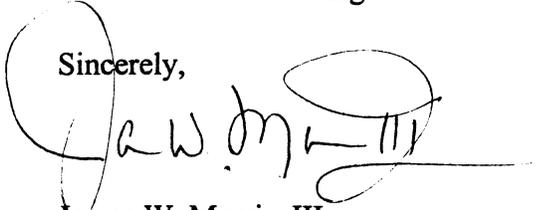
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 written in a cursive style with a large, looping initial "J" and a long horizontal stroke at the end.

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

JWM/sdk

Ref: ID# 148662

Encl. Marked documents

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