



August 27, 2001

Ms. Amanda Crawford  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P. O. Box 12548  
Austin, Texas 78711-2548

OR2001-3780

Dear Ms. Crawford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151165.

The Office of the Attorney General (the "OAG") received a request for information relating to the OAG's defense of Juan F. Gaytan in a specified court case, including the costs expended by the OAG, all reports regarding the case, and information concerning the individuals who worked on the case. The requestor also asked for various policy statements. You state that you will release an estimated 250 pages of responsive information upon payment of costs. *See* Gov't Code § 552.2615. You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.107, 552.111, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information and the representative samples submitted as Exhibit 3.<sup>1</sup>

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<sup>1</sup>In reaching our conclusion here, we 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.

You claim that credit card numbers in Exhibit 3 are excepted under sections 552.101 and 552.136 of the Government Code. The Seventy-seventh Legislature recently added section 552.136 to the Public Information Act,<sup>2</sup> which makes credit card numbers confidential. Senate Bill 694 was passed on May 14, 2001, became effective when it was signed by the Governor on May 26, 2001, and provides, in relevant part, as follows:

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.

- (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:
  - (1) obtain money, goods, services, or another thing of value; or
  - (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.
- (b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.136). You have marked information which you claim is excepted under section 552.136 of the Government Code. We conclude that you may only withhold the credit card numbers under section 552.136.<sup>3</sup>

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<sup>2</sup>The Legislature also enacted two other bills that added a section 552.136 to the Public Information Act. One is House Bill 2589, which makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The other is Senate Bill 15, which makes information maintained by family violence shelter centers confidential. *See* Act of May 14, 2001, 77th Leg., R.S., S.B. 15, § 1 (to be codified at Gov't Code § 552.136). In addition, Senate Bill 694 enacted the same language from House Bill 2589 regarding the confidentiality of e-mail addresses, but codified it as section 552.137 of the Act.

<sup>3</sup>Having found the credit card numbers to be excepted under section 552.136 of the Government Code, we need not address your arguments under section 552.101 in conjunction with common law privacy.

You also assert that information in Exhibit 3 is excepted under section 552.117(1) of the Government Code. Section 552.117(1) excepts from disclosure information that relates to the home address, home telephone number, social security number, and family member information of employees of a governmental body who request that this information remain confidential under section 552.024. You inform this office that the employee properly elected to withhold his home address, home telephone number, social security number, and family membership information under section 552.024 prior to the date of the request. Thus, we agree that you must withhold the employee's home address, home telephone number, and social security number which you have marked, under section 552.117(1) of the Government Code.

You also claim that marked information in Exhibit 3 is excepted under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, we agree that you must withhold the driver's license number and license plate number under section 552.130(a) of the Government Code.

Next, you contend that a letter submitted as Exhibit A is excepted under section 552.107 of the Government Code. Section 552.107(1) excepts information that an attorney of a political subdivision cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), 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 at 5 (1990). When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107(1) protects them only to the extent that such communications reveal the attorney's legal opinion or advice. ORD 574 at 3. In addition, purely factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

You explain that the letter is from an assistant attorney general to his client and is a "confidential communication made for the purpose of facilitating the rendition of professional legal services to the client." After reviewing the letter in Exhibit A, we agree that the letter is excepted under section 552.107(1). Therefore, you may withhold the letter in Exhibit A under section 552.107(1) of the Government Code.

You also assert that a memorandum in Exhibit B is attorney work product that is excepted under section 552.111 of the Government Code. A governmental body may withhold attorney work product from disclosure 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)).

You explain that the interoffice memorandum was created for the purposes of litigation during the OAG's representation of a client and before a final judgment was entered in the case. Therefore, we conclude that you have demonstrated that the memorandum was created in anticipation of litigation under the test articulated in *National Tank*. Further, we agree that the memorandum reveals an attorney's mental processes, conclusions, and legal theories concerning the lawsuit. Based on your representations and our review of the submitted information, we agree that the memorandum in Exhibit B may be withheld under the attorney work product privilege as incorporated into section 552.111 of the Government Code.

In conclusion, the OAG must withhold the credit card numbers in Exhibit 3 under section 552.136 of the Government Code. Further, the OAG must withhold the information it marked under sections 552.117(1) and 552.130. The OAG may also withhold the letter in Exhibit A under section 552.107 and the memorandum in Exhibit B under section 552.111 of the Government Code. You must release the remaining submitted 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

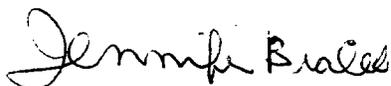
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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 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,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/sdk

Ref: ID# 151165

Enc: Submitted documents

c: Ms. Per Ann Hardy  
Attorney and Counselor at Law  
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(w/o enclosures)