Office of the Attorney General · State of Texas
John Cornyn

November 5, 2001

Ms. Julie Gannaway
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2001-5082

Dear Ms. Gannaway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154354.

The City of Bryan (the "city") received a request for "all of the Traditions project files that were in the custody of" a former city employee. You claim that a particular responsive document is excepted from disclosure under sections 552.101 and 552.107 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the city does not claim that any other information from the requested files is excepted from public disclosure. To the extent there is other responsive information, and the city has not released that information, it must do so immediately. *See* Gov't Code §§ 552.006, .301(a), .302.

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,

[1]Although you argue that information is protected under the attorney-client privilege pursuant to section 552.101 of the Government Code, which excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," the attorney-client privilege is recognized under section 552.107. Thus, we address your attorney-client privilege argument under section 552.107.

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 memos sent. *Id.* at 5.

Upon review of the information you seek to withhold, we conclude that all of the information in Exhibit B falls within the attorney-client privilege, and therefore it may be withheld from disclosure in its entirety under section 552.107(1).

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,

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 154354

Enc. Submitted documents

c: Ms. Dawn Lee Wakefield
2508 Whispering Oaks Circle
Bryan, Texas 77802
(w/o enclosures)