



January 16, 2002

Ms. Cathy Iberg
Interim President and CEO
The University of Texas Investment Management Company
221 West Sixth Street, Suite 1700
Austin, Texas 78701

OR2002-0261

Dear Ms. Iberg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157463.

The University of Texas Investment Management Company ("UTIMCO") received a request for information relating to a previous information request. You state that UTIMCO has made some of the information that is responsive to the present request available to the requestor.¹ You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.107 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 excepts from disclosure "information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]" This exception protects information that an attorney cannot disclose because of a duty to the client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from 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

¹You also inform this office that, in response to the August 3, 2001 request, UTIMCO released more than 300 pages of redacted bills for professional legal services; requested a decision under chapter 552 of the Government Code with regard to the redacted information; and released additional information contained in the legal bills in accordance with Open Records Letter No. 2001-4858 (2001).

body's attorney. *See* ORD 574 at 5. Section 552.107(1) does not protect purely factual information and thus does not except from disclosure factual recounting of events or documentation of calls made, meetings attended, and memos sent. *Id.*

You inform this office that the information at issue consists of an e-mail communication from UTIMCO's attorney to UTIMCO personnel and attached drafts of related documents. You explain that the e-mail and draft documents were provided to UTIMCO by its attorney for the purpose of rendering professional legal services. You also advise us that these documents were not disclosed to anyone outside UTIMCO. Based on your representations, we conclude that UTIMCO may withhold the submitted information under section 552.107(1) of the Government Code.

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 Texas Building and Procurement 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 fluid and cursive, with a large initial 'J' and 'W'.

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

JWM/sdk

Ref: ID# 157463

Enc: Submitted documents

c: Mr. Stephen N. Lisson
INITIATE!!
P.O. Box 2013
Austin, Texas 78768-2013
(w/o enclosures)