



November 20, 2002

Ms. Maureen E. Ray  
Special Assistant Disciplinary Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711-2487

OR2002-6644

Dear Ms. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172527.

The State Bar of Texas (the "state bar") received a request for a copy of the videotape of a disciplinary hearing held August 20, 2002 concerning a specified attorney. You claim that the requested information is not subject to the Public Information Act (the "Act"), chapter 552 of the Government Code. In the alternative, you contend that the requested videotape is excepted from disclosure under section 552.101 of the Government Code. We have considered your comments and reviewed the submitted information.

You contend that the requested information is not subject to the Act, pursuant to section 81.033(a) of the Government Code. Section 81.033(a) provides:

All records of the state bar, except for records pertaining to grievances that are confidential under the Texas Rules of Disciplinary Procedure, and records pertaining to the Texas Board of Legal Specialization, are subject to Chapter 552.

You state that the requested videotape pertains to a grievance filed against an attorney and is confidential under rules 2.15 and 15.10 of the Texas Rules of Disciplinary Procedure. Thus, you argue that pursuant to section 81.033(a) of the Government Code, the requested videotape is not subject to disclosure under the Act. Rule 2.15 of the Texas Rules of Disciplinary Procedure provides:

All information, proceedings, hearing transcripts, statements, and any other information coming to the attention of the investigatory panel of the Committee must remain confidential and may not be disclosed to any person or entity (except the Chief Disciplinary Counsel) unless disclosure is ordered by the court. If there is a finding of Just Cause and any Sanction other than a private reprimand (which may include restitution and payment of Attorneys' Fees) imposed by agreement of the Respondent, all of the information, proceedings, hearing transcripts, documents, statements, and other information coming to the attention of the investigatory panel shall be, upon proper request, made public. Notwithstanding anything herein to the contrary, any action taken by a Committee to refer a matter to the Board of Disciplinary Appeals for attorney Disability screening and determination must remain confidential.

Rule 15.10 of the Texas Rules of Disciplinary Procedure provides:

All communications, written and oral, and all other materials and statements to or from the Commission, Chief Disciplinary Counsel, the Complainant, the Respondent, and others directly involved in the filing, screening, investigation, and disposition of Inquiries and Complaints are absolutely privileged.

You state that the requested videotape pertains to the investigatory hearing of a complaint against an attorney that resulted in the dismissal of the complaint by the investigatory panel. Based on our review of your arguments and the videotape, we agree that the videotape is confidential under rule 2.15 and "absolutely privileged" under rule 15.10. We note that the phrase "absolutely privileged" in rule 15.10 is synonymous with "confidential" in section 81.033(a). *See, e.g.*, Attorney General Opinion JM-1235 (1990); *see also* Open Records Decision Nos. 384 (1983), 375 (1983). We therefore conclude that, pursuant to section 81.033(a) of the Government Code, the requested videotape is not subject to the Act. *See* Gov't Code § 81.033(a).

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 172527

Enc: Submitted documents

c: Mr. L.D. Pitts  
P.O. Box 52592  
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(w/o enclosures)