



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2003

Ms. Caroline Kelley
Assistant City Attorney
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2003-5544

Dear Ms. Kelley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185611.

The City of Missouri City (the "city") received a request for all documents related to former litigation between the city and the City of Arcola. You state that most of the responsive information has been released to the requestor. However, you claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that the certified agenda of a specified executive session may be responsive to the request for information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying *only under a court order* issued under Subsection (b)(3)." (emphasis added). Thus, such information cannot be released to a member of the public in response to an open records request. See Open Records Decision No. 495 (1988). Therefore, the city must withhold any responsive certified agendas or tapes of closed meetings pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

Next, you assert that the remaining responsive information is excepted under section 552.111 of the Government Code and the attorney work product privilege. A governmental body may withhold attorney work product from disclosure under section 552.111 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). You state that the notes in question "were made by the City Attorney after suit had been brought in Cause No. 44,298 in the District Court of Fort Bend County, 268th Judicial District and Cause No. 44,299 in the District Court of Fort Bend County, 240th Judicial District." You have submitted records to this office documenting this litigation. Accordingly, we conclude that you have established the first prong of the work product test in demonstrating that the information was created for trial. The second requirement that must be met is that the work product "consists of or tends to reveal the thought processes of an attorney in the civil litigation process." Open Records Decision No. 647 at 4 (1996). Although the attorney work product privilege protects information that reveals the mental processes, conclusions, and legal theories of the attorney, it generally does not extend to facts obtained by the attorney. *See id.* (citing *Owens-Corning Fiberglass v. Caldwell*, 818 S.W.2d 749, 750 n.2 (Tex. 1991); *see also Leede Oil & Gas, Inc. v. McCorkle*, 789 S.W.2d 686 (Tex. App.—Houston [1st Dist.] 1990, no writ) (the attorney work product privilege does not protect memoranda prepared by an attorney that contain only a "neutral recital" of facts). Based on our review of the submitted information, we find that it consists of an attorney's mental processes, conclusions, and legal theories, and may therefore be withheld under section 552.111 of the Government Code in its entirety. As we are able to make this determination, we need not address your remaining argument under section 552.103 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 Dep't of Pub. 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 185611

Enc: Submitted documents

c: Mr. Roy Jackson
Mayor
City of Arcola
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Arcola, Texas 77583
(w/o enclosures)