ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2005

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

OR2005-00045

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# 216113.

The State Bar of Texas (the "State Bar") received a request for case file number 1596492, and copies of the case management notes. You state that the State Bar has previously provided the contents of the Client-Attorney Assistance Program ("CAAP") case file regarding case number 1596492 to the requestor. Thus, you advise that the remaining information at issue in the present request consists of the case management notes for case number 1596492. You claim that the case management notes are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted 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," and encompasses information made confidential by other statutes. You raise section 552.101 in conjunction with Rule 2.16 of the Texas Rules of Disciplinary Procedure and section 81.072 of the Government Code. Rule 2.16 pertains to proceedings of grievance committees within the State Bar's disciplinary districts and provides that "Disciplinary Proceedings are strictly confidential and not subject to disclosure, except by court order or as otherwise provided in this Rule 2.16." TEX. R. DISCIPLINARY P. 2.16, *reprinted in* Gov't Code tit. 2, subtit. G, App. A-1. Section 81.072(e) of the Government Code mandates that the State Bar shall establish "a voluntary mediation and dispute resolution procedure" to attempt to resolve

certain inquiries and complaints. Gov't Code § 81.072(e). You indicate that CAAP is the State Bar's voluntary mediation and dispute resolution procedure established as required under this provision.

Section 81.072(e-1) provides:

> All types of information, proceedings, hearing transcripts, and statements presented during the voluntary mediation and dispute resolution procedure established under Subsection (e) are confidential to the same extent the information, proceedings, transcripts, or statements would be confidential if presented to a panel of a district grievance committee.

Gov't Code § 81.072(e-1). We find that the CAAP case management notes at issue consist of information generated during the operation of the voluntary mediation and dispute resolution procedure that would be confidential if presented to a panel of a district grievance committee. We therefore conclude that, pursuant to section 81.072(e-1) of the Government Code and Rule 2.16, the case management notes are confidential by law and must be withheld from disclosure under section 552.101 of the Government Code.

You ask this office to issue a previous determination allowing the State Bar to withhold the contents of CAAP files without the necessity of requesting an attorney general decision. *See* Open Records Decision No. 673 (2001). We decline to issue a previous determination to the State Bar at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us and 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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 216113

Enc: Submitted documents

c: Ms. Elvira R. de la Cruz
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(w/o enclosures)