

## OPINION 517

September 1996

### Question

Telephone records of an attorney for a governmental entity that is subject to the Texas Open Records Act, Vernon's Tex. Codes Ann., Government Code §552.001 et seq. are requested under the provisions of such act. Are the requested records "confidential information" subject to the limitations on disclosure of [DR 1.05](#) of the Texas Disciplinary Rules of Professional Conduct?

### Discussion

Attorneys for governmental entities in Texas are subject to the Texas Disciplinary Rules of Professional Conduct (Disciplinary Rules). *See* Comment 2 to [DR 1.10](#) and [DR 1.12](#) and Comment 9 thereto (all citations are to the rules and comments of the Disciplinary Rules). In the case of an attorney for a governmental entity, the client of the attorney is the entity.

An attorney's telephone records relating to work on behalf of a client will normally be "confidential information" within the meaning of DR 1.05(a), which provides as follows:

- a. "Confidential information" includes both "privileged information" and "unprivileged client information." "Privileged information" refers to the information of a client protected by the lawyer-client privilege of [Rule 5.03](#) of the Texas Rules of Evidence or of Rule 5.03 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by [Rule 5.01](#) of the Federal Rules of Evidence for United States Courts and Magistrates. "Unprivileged client information" means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of representation of the client.

Comment 5 to [DR 1.05](#) specifically recognizes that "[t]he requirement of confidentiality applies to government lawyers. ..."

For purposes of this opinion, it is unnecessary to determine the precise boundaries under this rule between privileged information and unprivileged client information. Records of telephone calls with respect to client matters will, when not privileged, be other information "acquired by the lawyer during the course of or by reason of the representation of the client" and hence will be unprivileged client information. This conclusion applies not only to notes and records of the contents of telephone conversations but also to other nonpublic information relating to the attorney's legal work such as telephone numbers called by the attorney and the times of telephone calls.

An attorney subject to the Disciplinary Rules is required by [DR 1.05\(b\)](#) to not knowingly disclose confidential information relating to a client except as otherwise permitted or required by DR 1.05 or other applicable law. The Question Presented does not specify facts that might implicate the exceptions specified in DR 1.05 other than possibly the exception set forth in DR 1.05(c)(4). This provision permits a lawyer to reveal confidential information. "[w]hen the lawyer has reason to believe it is necessary to do so in order to comply with a court order, Texas Disciplinary Rules of Professional Conduct, or other law." This exception is also noted in Comment 22 to DR 1.05, which recognizes, "a lawyer may be obligated by other provisions of statutes or other law to give information about a client."

The question of whether the Texas Open Records Act or some other legal authority outside the Disciplinary Rules overrides the requirements of DR 1.05 is a question of law beyond the jurisdiction of this committee and accordingly the committee expresses no opinion on such question.

### **Conclusion**

[DR 1.05](#) requires that an attorney for a governmental entity subject to the Texas Open Records Act not disclose telephone records relating to representation of the governmental entity unless one of the specified exceptions applies to permit such disclosure. No opinion is expressed as to whether the Texas Open Records Act or other provision or rule of law requires disclosure that would otherwise be prohibited by DR 1.05.