



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTON  
ATTORNEY GENERAL

April 18, 1990

Mr. Skip Newsom  
Attorney  
Booth & Newsom  
1900 First City Centre  
816 Congress Avenue  
Austin, Texas 78701-2443

OR90-150

Dear Mr. Newsom:

By letter of December 7, 1989, you asked us to reconsider OR89-401, an informal open records ruling that was addressed to Ms. Carolyn Ahrens of your law firm as attorney for the Cities of Sachse and Rowlett. We have decided to reconsider and modify OR89-401. Your letter of December 7 has been designated ID# 8344.

Informal ruling OR89-401 arose out of open records requests to the Cities of Sachse and Rowlett from the City of Garland for records indicating the names of all certified accountants engaged by the cities to perform annual and other audits and special reports regarding sewer contracts between each city and the requestor. The request also covered all reports and audits submitted to the cities. Your letter forwarding this request to us was assigned ID# 7203. A subsequent request sought invoices and other records reflecting the cities' payment to consultants and attorneys. Your letter forwarding this request to us was designated ID# 7421.

You contended that sections 3(a)(1) and 3(a)(3) of the Open Records Act applied to this information and excepted it from disclosure under the Open Records Act. The informal ruling stated that the identities of accountants, certain information on invoices from the cities' attorneys, invoices from the cities' consultants, and copies of checks must be released. It also pointed out that annual audits prepared by a municipality in compliance with section 103.001 of the Local Government Code are expressly made public records by section 103.003 of that code. It returned to you the audit reports and attorney billing statements for you to indicate the specific information covered by the sections you raised.

In your letter of December 7, 1989, you point out that OR89-401 does not mention that the Cities of Sachse and Rowlett are involved in litigation with the City of Garland, the party requesting the information under the Open Records Act, and you set out case styles, cause numbers, and courts of the five lawsuits. You state that judicial discovery channels have been pursued for most of the matters in issue in ID#s 7203 and 7421. To the extent material has been made available to the requestor through discovery, we need not further consider its availability under the Texas Open Records Act. See Open Records Decision No. 180 (1977); see also Open Records Decision No. 349 (1982) (letter made available by discovery; no claim made that a protective order applied to the letter).

You also point you that the attorney billings requested of the City of Rowlett have been submitted in camera for court review. By court order, the City of Rowlett was ordered to produce only a limited number and portion of the attorney billing statements with the description of work performed deleted. This court order resolves the matter of the attorney invoices which was addressed in OR89-401. The protective order renders the material that it covers "confidential by law" within section 3(a)(1) of the Open Records Act. Open Records Decision No. 389 (1983). In any case, this office has held that the original itemized bills for attorney's fees representing a client in litigation are excepted from public disclosure under section 3(a)(1) by virtue of the attorney-client privilege. Open Records Decision No. 304 (1982).

You have returned the audit reports and attorney billing statements as requested by OR89-401. The attorney billing statements have already been addressed. Since it appears that not all audit reports have been dealt with by the courts in connection with discovery, I will consider whether they are protected from disclosure by section 3(a)(3) of the Open Records Act.

The Open Records Act was not intended to provide parties involved in litigation any earlier or greater access to information than was already available in such litigation. Open Records Decision No. 108 (1975). Moreover, section 3(a)(3) of the Open Records Act "was intended to prevent the use of the Open Records Act as a method to avoid discovery rules." Attorney General Opinion JM-1048 (1989). In the letter that we have designated ID# 7203, you argue that information indicating the name or names of independent auditors engaged by the City of Rowlett

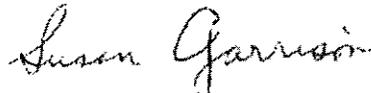
and copies of reports and documents prepared by them is information relating to litigation of a civil nature to which the cities are parties, and release of it would impair their litigation strategy. Your statement in support of your request for Texas Open Records Act decision ID# 7203 pointed out that the City of Garland was also seeking this information through discovery. You submitted copies of the subpoenas duces tecum in this matter.

You stated that the City of Garland has conceded the relevancy of its request to the pending litigation by making the identical request by subpoena duces tecum. I agree that this implication can very reasonably be drawn from the action of the City of Garland in seeking to subpoena the information. Under these circumstances, the office cannot dispute the relevance of the information to the litigation. We cannot determine what will or will not be discoverable, and accordingly leave such questions to the court, the proper forum to resolve them.

You also refer to ID# 7836, in which you forward a request from Charles M. Hinton, Jr., City Attorney for the City of Garland, requesting copies of tapes of certain executive session meetings of the Rowlett City Council. This request was resolved in OR90-141.

Since the various records requests have been resolved, we have no authority under section 7 of the Open Records Act to discuss the arguments you present in ID# 7421 about the role of the attorney general in dealing with section 3(a)(3) when the requestor is seeking the same material through judicial discovery. However, we will keep your arguments in mind if a similar question should arise in connection with a request for information under the Texas Open Records Act or a request for legal advice from a public officer authorized to request Attorney General Opinions by section 402.042 of the Government Code. Informal ruling OR89-401 is modified in accordance with the ruling. If you have any questions about this ruling, please refer to OR90-151.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

SG/le

Ref: OR89-401

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Enclosure: Attorney Billing Statements  
Audit Reports  
ORD-395

cc: Mr. Steven R. Pitzner  
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