



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 2, 1991

Ms. Annette Jones  
Assistant City Attorney  
City of Waco  
P. O. Box 2570  
Waco, Texas 76702-2570

OR91-458

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11508.

The City of Waco (hereinafter, the city) received an open records request from a reporter for "information relating to the hours worked and wages paid to attorney Bettye Springer, the Fort Worth law firm of Haynes and Boone and Austin attorney James Ludlum in connection with" a certain lawsuit. You inform us that in response to this request, the city released a copy of a check from the city payable to an insurance company. That check represents payment of the retention amount in an insurance policy under which the insurance company is providing a defense in the lawsuit.

The insurance company selected James Ludlum of the law firm of Ludlum and Ludlum and Bettye Springer of the law firm of Haynes and Boone to defend the suit against the city. You advise that under the insurance contract, the insurance company pays all attorney fees. You say that all bills from attorneys are sent to the insurance company for payment and that only the insurance company has made any payments to the attorneys in the case. You also say that whereas the Haynes and Boone law firm has provided the city with copies of the bills to the insurance company, the Ludlum and Ludlum law firm has not so provided copies of its bills. The Haynes and Boone bill contains an invoice sheet and an itemized list of services with a description of the work done.

You raise section 3(a)(1) of the Open Records Act, which excepts from required public disclosure information deemed confidential by law, either Constitutional, statutory, or by judicial decision. You rely on the attorney-client privilege.

Recently, this office determined that whereas past decisions have relied on section 3(a)(1) to protect information within the attorney-client privilege, the privilege is more specifically covered under section 3(a)(7). Open Records Decision No. 574 (1990) (copy enclosed). The attorney client privilege protects only an attorney's written advice and privileged communications. *Id.* Factual information, such as documentation of calls made, memos sent, meetings attended, which does not reveal the attorney's legal advice or the client's confidences, is not protected by section 3(a)(7). *Id.* Open Records Decision No. 589 (1991) (copy enclosed). We have marked the Haynes and Boone bill accordingly.

You say that you do not possess a copy of the Ludlum and Ludlum bill, because the Ludlum and Ludlum firm sent its bill only to the insurance company. Nevertheless, the principles about disclosure of billing information and the attorney-client privilege discussed above apply to the insurance company's bills from the Ludlum and Ludlum law firm. This is so because we have determined that for purposes of section 3(a) the insurance company is the agent of the city.

Section 3(a) of the Open Records Act provides in pertinent part:

All information collected, assembled, or maintained by or for governmental bodies, except in those situations where the governmental body does not have either a right of access to or ownership of the information, pursuant to law or ordinance or *in connection with the transaction of official business* is public information. . .(emphasis added)

In providing a defense, the insurance company is carrying out a task that otherwise would have been left to the city, i.e., "official business," and that the city delegated to the insurance company. See Open Records Decision No. 437 (1986). Thus, the insurance company is the agent of the city and by receiving the attorney bills "collected, assembled or maintained" information for the city. See *Id.* at 3. (copy enclosed); Open Records Decision No. 445 (1986); see also *Mandola v. Mariotti*, 557

S.W.2d 350, 352 (Tex. Civ. App.--Houston [1st Dist.] 1977, writ ref'd n.r.e.) (indemnity insurer may, by retaining full control of action against the insured, become the agent of the insured in taking action under such a reservation of authority).

A city may not authorize its agent to keep information confidential if the city has no authority to do so. Open Records Decision No. 585 (1991) (copy enclosed). The city cannot authorize the insurance company as its agent to withhold information the city cannot withhold. Therefore, any information on the Ludlum and Ludlum bill that is not excepted from required public disclosure by section 3(a)(7) must be made available to the requestor. We have enclosed the samples of bills, which we have marked according to the principles for applying the attorney-client privilege to attorney bills discussed above. Please note that the information about the hours worked must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling, rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-458.

Yours very truly;



Kay Guajardo  
Assistant Attorney General  
Opinion Committee

Ref.: ID# 11508

Enclosure: ORD's 574, 585, 437, 589  
Return Marked Documents

cc: Mark England  
Waco Tribune Herald  
9th & Franklin Ave.  
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