



Office of the Attorney General
State of Texas

October 22, 1992

DAN MORALES
ATTORNEY GENERAL

Ms. Merri Schneider-Vogel
Bracewell & Patterson
2900 South Tower Pennzoil Place
Houston, Texas 77002-2781

OR92-592

Dear Ms. Schneider-Vogel:

You request a reconsideration of Open Records Letter OR92-500 (1992) (copy enclosed), in which we addressed whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request for reconsideration was assigned ID# 17313.

In Open Records Letter OR92-500, we addressed certain letters, documents, and attorney billing statements in the possession of the Pasadena Independent School District (the "school district"), which you represent. Specifically, at issue was the following:

- (1) a full and complete copy of the June 22, 1992, letter given to the school board members by Superintendent Larry Vaughn;

....

- (3) copies of all billings from Bracewell & Patterson, and billings from other law firms retained by the school district for legal services, from June 1988 through the current billing.

You claimed that the requested information was excepted from required public disclosure under sections 3(a)(1), 3(a)(3), 3(a)(7), and 3(a)(11) of the Open Records Act. We determined that the requested letter of June 22, 1992, was not excepted from required public disclosure and that additional information was necessary in order to determine whether the attorney billing statements fell within the attorney-client privilege, as you claimed.

We have considered your additional arguments provided with respect to the letter from Superintendent Larry Vaughn, dated June 22, 1992. You claim that the letter is excepted from required public disclosure by section 3(a)(11), which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." As we said in Open Records Letter OR92-500, the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. Open Records Decision Nos. 538 (1990); 464 (1987).

We have re-examined Mr. Vaughn's letter to the school board and adhere to our conclusion in Open Records Letter OR92-500 that its general statements about the nature of the board's relationship to its author and the board's activities fall outside the protection of section 3(a)(11). Accordingly, the letter must be released.

You also claim that portions of the requested attorney billing statements are excepted from required public disclosure by the attorney-client privilege and by section 3(a)(3) of the Open Records Act. You have re-submitted to us for review representative samples of the information requested and have marked the information that you claim is not protected by sections 3(a)(3) and 3(a)(7). You claim that the remaining information is excepted from required public disclosure by sections 3(a)(3) and 3(a)(7). With regard to the section 3(a)(7) exception, you have not documented that the hours worked or the billing descriptions related to those hours constitute client confidences or legal advice or opinion. Factual descriptions of calls made, meetings attended or work performed are not excepted by section 3(a)(7) absent documentation that they reveal client confidence or an attorney's legal advice. Open Records Decision No. 574 (1990) at 5-7; *see also* Open Records Decision No. 589 (1991). Nor have you documented that litigation is pending with regard to any matter described in the billing statements. The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). We conclude that you have not met your burden of establishing that the requested information is excepted from disclosure. Accordingly, the requested information must be released in its entirety.

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 OR92-592.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GCK/lmm

Enclosures: Submitted documents
Open Records Decision Nos. 589 ; 574
Open Records Letter OR92-500

Ref.: ID# 17313

cc: Mr. Larry Maxwell
Bay Area Family Association
2203 North Palm Court
Pasadena, Texas 77502
(w/o enclosures)