



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 29, 1994

Ms. Katherine B. Cahill and Mr. David Lawrence Earl  
San Antonio Water System  
P.O. Box 2449  
San Antonio, Texas 78298-2449

OR94-855

Dear Ms. Cahill and Mr. Earl:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 25092.

The San Antonio Water System (the "water system") has received a request for certain attorney billing information for September and October 1993 and January 1994. You have submitted the requested information to us for review and claim that sections 552.103(a) and 552.107 of the Government Code except it from required public disclosure.

Section 552.103(a) excepts information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which . . . a political subdivision is or may be a party or to which an officer or employee of . . . a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that . . . the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). Whether a

governmental body may anticipate litigation must be determined on a case-by-case basis. Open Records Decision No. 452 (1986). We have examined the portions of the bills that you have marked and seek to protect under section 552.103(a) and conclude that you have made the requisite showing that the information relates to pending or reasonably anticipated litigation. Accordingly, the water system may withhold the marked portions of tabs 1, 2, 4, 5, 6, and 7 under section 552.103(a) of the Government Code.<sup>1</sup> However, you may not withhold the tab 7 invoice, as you have not explained how the information about the charges relates to pending litigation.

You also claim that portions of the bills are within section 552.107 of the Government Code. Section 552.107 excepts information if:

(1) it is information that . . . an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Section 552.107(1) protects information that reveals client confidences to an attorney, including facts and requests for legal advice, or that reveals the attorney's legal advice. See Open Records Decision No. 574 (1990). We have examined the information for which you seek section 552.107 protection, which you have marked as tabs 3, 8, and 9, and conclude that it constitutes information that reveals client confidences. Accordingly, the water system may withhold such information pursuant to section 552.107 of the Government Code.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records.

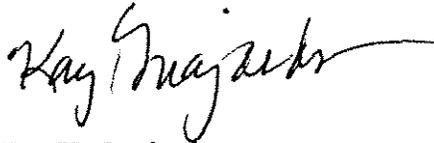
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<sup>1</sup>We assume, however, that the opposing parties in the pending litigation have not previously had access to the information at issue; absent special circumstances, once all parties to the litigation have obtained the information, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the pending litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

<sup>2</sup>You state that the water system "received a second request for copies of monthly billing statements for legal and other related services performed by, and privileged documents kept in the legal files of outside firms." You did not provide us with a copy of this second request or submit any additional documents as responsive to the second request. This letter does not reach, and therefore authorize the withholding of any information other than the particular records that have been submitted to this office for review.

If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Open Government Section

KHG/GCK/rho

Ref.: ID# 25092  
ID# 25630  
ID# 26042

Enclosures: Submitted documents

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