



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1994

Mr. Ivan J. Mlachak
Feldman & Associates
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR94-874

Dear Mr. Mlachak:

As counsel for the Fort Bend Independent School District ("the school district"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27468.

The school district received a request for the fee bills from your law firm for the months of April, May, and June of 1994. In particular, the requestor stated that "[t]he scope of our investigation includes any and all expenses associated with the ongoing single member district lawsuit and the current investigation of Superintendent Dr. Raj Chopra" You claim that these bills are excepted from required public disclosure based on sections 552.103, 552.107(1), and 552.111 of the Government Code.

We first consider the fee bills regarding the investigation of the superintendent. Section 552.107(1) of the Government Code states that information is excepted from required public disclosure if

it is information that the attorney general or 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.

This exception applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). Thus, if a governmental body seeks to withhold attorney fee bills under section 552.107(1), the governmental body must identify the portions of the bills that reveal client confidences or attorney advice. *See* Open Records Decision No. 589 (1991). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See id.* Thus, a governmental body may not withhold fee bills in their entirety under this exception. *See id.*

We have reviewed the fee bills regarding the investigation of the superintendent and conclude that only a small portion of the bills contains the details of the substance of a communication between an attorney and a client. The school district may withhold these portions from required public disclosure pursuant to section 552.107(1) of the Government Code. We have marked the bills accordingly.

You also raise section 552.111 of the Government Code. Section 552.111 of the Government Code excepts from required public disclosure:

an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* The fee bills contain no advice, recommendation or opinion reflecting the policymaking process of the school district. Consequently, you may not withhold the fee bills, or any portion thereof, based on section 552.111 of the Government Code.

Next we consider the fee bills pertaining to the "single member district lawsuit." Again, you assert that section 552.107(1) excepts from required public disclosure portions of the fee bills. You also raise section 552.103 of the Government Code.

You submitted for our inspection copies of fee bills for the following months: January, 1993; February, 1993; May, 1993; June, 1993; September, 1993; August, 1994; September, 1994. However, the requestor seeks the fee bills for the months of April, May, and June of 1994. As you have not submitted the particular fee bills requested, the school district may not withhold those fee bills under section 552.103 or section 552.107(1). Gov't Code § 552.303 (requiring governmental body to supply specific information requested when requesting an open records decision); Open Records Decision No. 195 (1978) at 2.

We will consider whether the school district may withhold the fee bills you enclosed. Section 552.103(a) applies to information

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

(2) that the attorney general or 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. 588 (1991).

The fee bills contain billings for services rendered in the lawsuit styled *Willie J. Rollings and Erwin O. Grice v. Fort Bend Independent School District, et al*, Civil Action No. H-9203399, pending in the United States District Court for the Southern District of Texas, Houston Division. We, therefore, conclude that the school district may withhold pursuant to section 552.103(a) information on the bills that relates to that litigation. We believe that the information on the bills that relates to the pending litigation includes only the portions of the bills that describe the services rendered. However, you have not explained how the remaining information on the bills, including the information about the costs of defending the lawsuit, relates to the pending litigation. Consequently, the remaining information must be released.¹

In concluding that the school district may withhold the descriptions of the services rendered, however, we assume that the opposing party to the pending litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *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 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).

We are resolving this matter with this 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. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

¹Because section 552.103(a) applies to a broader category of information than section 552.107(1), we need not consider your claim that portions of the fee bills are excepted under section 552.107(1).

KHG/rho

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Enclosures: Submitted documents

cc: Ms. B. K. Carter
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