



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 8, 1996

Ms. Jennifer W. Jacobs
Bracewell & Patterson
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR96-0676

Dear Ms. Jacobs:

As counsel for the Alief Independent School District, the Pasadena School District, the Spring Independent School District, and the Tomball Independent School District (the "school districts"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your requests were assigned identification numbers 38831, 38835, 38836, 38837.

Each school district received a request for "copies of all itemized billing of attorney fees and cost statements from any law firm or attorney involved in any special education matters within . . . the last five years." You inform us that the school districts have made available portions of the requested fee bills that reveal the date service was performed, the attorney's name, the hourly rate, and the total amount charged. You also inform us that pursuant to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and your conversation with Ms. Ruth Hall of the United States Department of Education, the school districts will not release fee bills that identify a student by name or that contain information which would enable the identification of student. *See* Open Records Decision No. 634 (1995) (educational institution may withhold from public disclosure information covered by FERPA and Government Code section 552.114 without requesting open records ruling). You submitted representative samples of the requested fee bills and assert that the entries describe attorney-client communications that are excepted from required public disclosure based on section 552.107(1) of the Government Code.¹ You also assert that other entries are excepted from required public disclosure based on section 552.103 of the Government Code.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision

Section 552.107(1) 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 Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 (1990) at 5, 462 (1987) at 13-14. Thus, this exception protects only the essence of the confidential relationship between attorney and client from the disclosure requirements of the Open Records Act. Open Records Decision No. 574 (1990) at 5. Consequently, a governmental body may not withhold fee bills in their entirety under this exception, but may only withhold information about the details of the substance of communications between the attorney and the client.

That section 552.107(1) protects only the details of the substance of attorney-client communications means that the exception applies only to information that reveals attorney advice and opinion or client confidences. *See id.* (1990). Consequently, 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.*

We agree that the fee bills contain attorney advice and client confidences. We have marked the portions of the fee bills that the school districts may withhold from required public disclosure based on section 552.107(1) of the Government Code.

Section 552.103 applies to information that relates to pending or reasonably anticipated litigation. *See* Open Records Decision No. 551 (1990). The Open Records Act requires a governmental body that raises an exception to disclosure to explain the

(Footnote continued)

Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office

applicability of that exception. You say “[o]ther entries relate to preparation for injunctions and investigations by the Office of Civil Rights,” referencing Alief Invoice #23 and Alief Invoice #8. We do not believe you have adequately explained how a particular entry on the referenced invoices is covered by section 552.103. Accordingly, the school districts may not withhold from required public disclosure any portion of the requested fee bills pursuant to section 552.103 of the Government Code.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Kay Guajardo". The signature is written in a cursive, flowing style.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID#s 38831, 38835, 38836, 38837

Enclosures: Marked documents