



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 20, 1996

Mr. Alan B. Rich
Friedman & Associates
570 Preston Commons West
8117 Preston Road
Dallas, Texas 75225

OR96-1718

Dear Mr. Rich:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100727.

The Dallas Independent School District (the "district"), which you represent, received a request for "each and every current contract for outside legal services provided for the DISD and all billings for such services and payment vouchers for the current fiscal year." The requestor also seeks all documents "concerning the casualty account maintained on behalf of the district by Texas Association of School Boards that reflect or record the current balance thereof and any disbursements from this account within the last twelve months." You state that most of the requested information will be provided to the requestor. You claim, however, that the descriptive time entries within the billings for legal services are excepted from required public disclosure by sections 552.103 and 552.107 of the Government Code. You have provided this office with a representative sample of the documents that the district seeks to withhold.¹

¹ In 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 Nos. 499 (1988); 497 (1988). 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.

Section 552.103(a) excepts from disclosure 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.

The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The district must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that the district is currently involved in a series of lawsuits with the requestor. You have provided a sample of the attorney billing statements in one such suit. We find that the litigation is pending and that some of the requested documents relate to that litigation. The district may, therefore, withhold those descriptive time entries within the legal billings that are related to the litigation with requestor.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, 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).

The request for information here, however, covers a broader category of information than that excepted by section 552.103, legal billings unrelated to the litigation with the requestor; therefore, we will address your argument under section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When

communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We have marked a sample of the type of information that the district may withhold from disclosure in the descriptive time entries that are unrelated to the litigation with the requestor. Thus, with the exception of the billings that are related to the requestor's litigation, and information that reveals confidential client communications to the attorney or the attorney's legal advice or opinions, the district must release the requested descriptive time entries.

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 should 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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 100727

Enclosures: Submitted documents

cc: Mr. Don Venable
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(w/o enclosures)

