



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 16, 1996

Mr. Richard L. Hamala  
Lloyd, Gosselink, Fowler, Blevins & Mathews, P.C.  
111 Congress Avenue, Suite 1800  
Austin, Texas 78701

OR96-2407

Dear Mr. Hamala:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102408.

Aqua Water Supply Corporation, Inc. ("Aqua"), which you represent, received a request for, among other things, invoices from two law firms from January 1, 1994 through August 31, 1996. You claim that the requested invoices are excepted from disclosure under sections 552.101, 552.103, 552.105, and 552.107 of the Government Code. You have submitted samples of the requested information. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. Aqua 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. Aqua must meet both prongs of this test for information to be excepted under section 552.103(a).

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<sup>1</sup>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.

After reviewing the submitted information, we conclude that Aqua has met its burden under section 552.103(a) as to some of the marked entries. However, we cannot determine from the face of the documents, nor have you explained, how the other entries for which Aqua claims an exception under section 552.103 are related to either reasonably anticipated or pending litigation. We have marked the entries that Aqua may withhold under section 552.103(a).<sup>2</sup>

We now address whether your other claimed exceptions to disclosure protect the remaining information from disclosure. Section 552.105 excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information excepted under section 552.105 that pertains to such negotiations may be excepted so long as the transaction is not complete. Open Records Decision No. 310 (1982). Because this exception extends to "information pertaining to" the location, appraisals, and purchase price of property, it may protect more than a specific appraisal report prepared for a specific piece of property. Open Records Decision No. 564 (1990) at 2. A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" Open Records Decision No. 357 (1982) at 3 (quoting Open Records Decision No. 222 (1979)).

Here, we cannot ascertain if any of the contemplated transactions are complete. For all transactions that have been completed at the time Aqua receives this ruling, Aqua may not withhold any of the related information under section 552.105. We have marked information that, if the transaction has not been completed, may be withheld under section 552.105. Aqua may not withhold the remainder of the information which you claim is excepted under section 552.105 from required public disclosure.

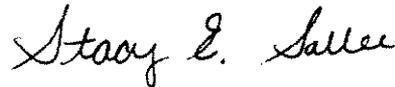
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<sup>2</sup>We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, 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).

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. We are unable to ascertain whether some of the communications you have marked are with clients. We have marked the information that Aqua may withhold under section 552.107(1).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 102408

Enclosures: Submitted documents

cc: Mr. Roger Dillon  
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(w/o enclosures)