



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 13, 1997

The Honorable Ana Markowski Smith
Val Verde County Attorney
207 East Losoya
Del Rio, Texas 78840

OR97-0843

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 32689.

The Val Verde County Attorney's Office (the "county attorney") received a request for "any and all reports, correspondence and memorandums concerning any and all expenditures made by the county in contesting and settling the lawsuit filed by" a named individual. You claim that the requested records are excepted from disclosure by sections 552.101, 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Initially, you assert that a September 22, 1994 letter is excepted from disclosure by the attorney-client privilege. Section 552.107(1) of the Government Code 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 find that the September 22, 1994 letter reveals the attorney's legal opinion or advice and, therefore, may be withheld under section 552.107.

You also argue that the settlement agreement dated January 13, 1995 is not responsive to the request and need not be released. We believe, however, that the settlement agreement is responsive to the request for information given that it concerns the county's settlement of the lawsuit. Further, governmental bodies may not enter into agreements to

keep information confidential except where specifically authorized to do so by statute. Open Records Decision Nos. 444 (1986), 437 (1986).

You also claim that one set of documents is protected from disclosure because they relate to "settlement negotiations." We presume that you intend to raise section 552.103. 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 governmental body 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 governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

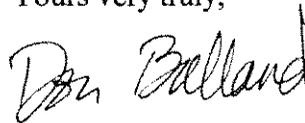
Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. It appears that the documents at issue have either been obtained from or provided to the opposing party; no section 552.103 interest exists. Thus, you may not withhold these documents under section 552.103.

Finally, you argue that the requested records are protected by a right of privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1; *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (addressing applicability of common-law privacy doctrine to files of investigation of allegations of sexual harassment). After reviewing the

submitted material, we do not believe that agreement or the other "settlement" documents are protected by a right of privacy under section 552.101 of the Government Code. *See Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with a court are generally considered public and must be released); *Star Telegram, Inc. v. Doe*, 915 S.W.2d 471, 474-475 (Tex. 1995). These documents must be released.

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# 32689

Enclosures: Submitted documents

cc: Mr. John Lynch
Assistant Managing Editor
Del Rio News-Herald
P.O. Box 4020
Del Rio, Texas 78840
(w/o enclosures)

