



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1997

Ms. Janice A. Cassidy
Attorney at Law
P. O. Box 592
San Benito, Texas 78586

OR97-1236

Dear Ms. Cassidy:

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# 106591.

The San Benito Housing Authority (the "housing authority"), which you represent, received a request for copies of "time sheets and/or time records, billing whips, billing and/or disbursement records for legal services, as well as . . . copies of checks reflecting same, from March 1992 to the present." You indicate that the housing authority is releasing copies of "billing and/or disbursement records." However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.102, 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the sample documents you have submitted.¹

Section 552.102 protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). For information to be protected from public disclosure under the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be

¹We 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.

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. Having reviewed the documents submitted to this office, we find no information that is highly intimate and embarrassing. We conclude that you may not withhold any of the requested information under section 552.102 of the Government Code.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to the 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. A governmental entity must meet both prongs of this test for information to be excepted under section 552.103(a). To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4. Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 (1989) at 5 (litigation must be "realistically contemplated").

On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983) at 2. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. In this instance you have not explained how any of the information you claim as "anticipated litigation" is pending or reasonably anticipated litigation. Therefore, the housing authority has not met its burden under section 552.103(a) and may not withhold the requested information on that basis.

We now address the applicability of the attorney-client privilege to the information contained in the billing statements. Section 552.107(1) excepts from disclosure communications that reveal client confidences or the attorney's legal advice or opinion. Open Records Decision Nos. 589 (1991) at 1, 574 (1990) at 3, 462 (1987) at 9-11. In addition, because section 552.107(1) does not ordinarily afford blanket protection, the governmental body asserting this exception must clearly mark or otherwise identify the information that it seeks to withhold either as confidential communications or the attorney's legal advice or opinions. If a governmental body seeks to withhold attorney fee bills under section 552.107(1), it must submit the bills to this office for review *and identify the portions that reveal client confidences or legal advice and opinion.* Open

Records Decision No. 589 (1991) at 1. After careful review, we are unable to determine which portions of the submitted documents contain the kind of information, if any, that is protected by section 552.107(1). Thus, the information at issue must be disclosed.

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,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/gle

Ref.: ID# 106591

Enclosures: Submitted documents

cc: Mr. Johnny Villarreal
550 W. Palm Blvd.
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(w/o enclosures)

