Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 9, 1997

Mr. Leonard H. Dougal
Small, Craig & Werkenthin
100 Congress, Suite 1100
Austin, Texas 78701-8355

OR97-1550

Dear Mr. Dougal:

On behalf of the Texas Boll Weevil Eradication Foundation, Inc. (the "Foundation"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 107837.

The Foundation received a request for fee bills from your firm since November 15, 1996, as well as for "[a]ny and all correspondence between [your] firm and the Foundation generated since March 1, 1997." You assert that portions of the requested information are excepted from required public disclosure based on sections 552.101, 552.103 and 552.107(1) of the Government Code.

Section 552.103(a) of the Government Code reads as follows:

> (a) Information is excepted from [required public disclosure] if it is 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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception

in a particular situation. The test for establishing that section 552.103 applies is a two-prong 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 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

You assert that the request for all correspondence between your firm and the Foundation is a request for an attorney's entire litigation file. You inform us that your firm is defending the Foundation in a number of lawsuits and approximately 12 small claims court cases. A request for an attorney's entire litigation file is protected from disclosure as attorney work product. *See* Open Records Decision No. 647 (1996) (construing Government Code section 552.111 and citing *Natioinal Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 461 (Tex. 1993)). To the extent the request includes an attorney's litigation file, we conclude that the Foundation may withhold the requested information from disclosure based on section 552.103. *See* Open Records Decision No. 429 (1985) at 4 (work product held to be one aspect of section 552.103). We also conclude that the Foundation may withhold from disclosure the second submitted document, the draft of an oral argument used in one of the Foundation cases.

You have submitted a representative sample of the requested fee bills.[1] You state that the Foundation will release to the requestor portions of the fee bills to include the date, the name of the attorney involved, the amount of time involved and the fees and costs billed. You assert that the descriptions of services on those bills are excepted from disclosure based on sections 552.101, 552.103 and 552.107(1). The submitted bills pertain to legal services provided in one of the Foundation cases. We conclude that the Foundation may withhold from disclosure the descriptions based on section 552.103.

However, when the opposing party in the litigation has seen or had access to any of the requested information, 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 is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Consequently, the Foundation may not withhold from disclosure based on section 552.103 information that an opposing party has seen or information in a file of a case that is concluded.

You raise section 552.107(1) for a letter from your firm to the Foundation's Executive Director. Section 552.107(1) of the Government Code reads as follows:

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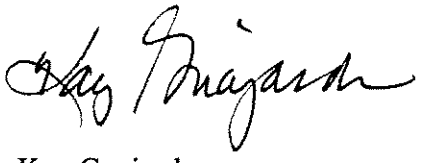
[1]In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental 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.

> Information is excepted from [required public disclosure] if
>
> (1) 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;

Under this exception, a governmental body generally may withhold only information revealing client confidences or containing legal advice or opinion. *See* Open Records Decision No. 574 (1990). We conclude that the Foundation may withhold the letter based on section 552.107(1).

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,



Kay Guajardo
Assistant Attorney General
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KHG/rho

Ref.: ID# 107837

Enclosures: Submitted documents

cc: Mr. Robert Bryce
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