



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 4, 1998

Ms. Tana K. Van Hamme
The Ronquillo Law Firm, P.C.
Harwood Center
1999 Bryan Street, Suite 3450
Dallas, Texas 75201

OR98-1130

Dear Ms. Van Hamme:

You have asked if information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID# 114482, 114910, 114911, and 114895.

You represent the Dallas Independent School District ("DISD"), which submitted to this office four requests for information concerning attorney fees paid by DISD. The requests seek: (1) documents relating to attorney fees paid by DISD from January 1, 1991 until the date of the request, (2) all invoices and payment vouchers from the The Ronquillo Law Firm ("Ronquillo") since September 1, 1996, (3) bills from law firms submitted to DISD since September 1996, (4) amounts paid by DISD to all law firms since September 1996, and (5) legal bills submitted by Ronquillo from October 1, 1997 through December 31, 1997. Representative samples of information that is responsive to the request were submitted to this office for review.¹ You have marked the documents to show the information that you contend is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code.

We note initially that some of the documents at issue have already been the subject of a prior open records letter. In Open Records Letter No. 97-2481 (1997), this office addressed your assertion that sections 552.103, 552.107(1), and 552.108 protected from

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 No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

disclosure information about legal billing and legal fees paid by DISD to Ronquillo between January 1, 1997, and September 16, 1997.² You sought a reconsideration of that ruling from this office. In Open Records Letter No. 98-1007 (1998), this office again determined that you had not established the applicability of sections 552.103, 552.107(1) or 552.108 to the information about legal fees billed or paid between January 1, 1997, and September 16, 1997.³ Thus, we do not address in this ruling any documents concerning legal fees billed to DISD or paid by DISD to Ronquillo between January 1, 1997 and September 16, 1997.⁴ We will address your arguments against disclosing the marked information in the remaining records.⁵

You have marked information that you assert is protected from disclosure under section 552.103(a) of the Government Code.⁶ 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. In Open Records Letter No. 97-2481 (1997), this office agreed that you had shown the applicability of section 552.103(a) to portions of an August 31, 1997 billing record that pertained to the "Tasby Appeal." Open Records Letter No. 97-2481 (1997) is applicable to portions of the billing records at issue that pertain to this appeal, which you represent as still pending. We agree that the highlighted billing descriptions concerning this appeal may be withheld from disclosure under section 552.103(a). We note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

You also submitted to this office petitions concerning two other cases that you assert

²One of the requestors sought records about payments from January 1, 1997 until the date of the request, which was received September 16, 1997. The other requestor sought records concerning legal bills from January 1997 until the date of the request, which was received on August 8, 1997. This office issued one ruling, Open Records Letter No. 97-2481(1997), which addressed documents concerning legal billings or fees paid to Ronquillo from January 1 to September 16, 1997.

³In Open Records Letter No. 98-1007 (1989), this office also addressed your arguments concerning federal employer identification numbers. Thus, we do not address that argument again in this letter.

⁴We note that in Open Records Letter No. 97-2481 (1997), you did not assert section 552.111 as an exception to disclosure. Because you did not timely raise section 552.111 in connection with the open records requests previously addressed, section 552.111 was waived as to the documents addressed in Open Records Letter No. 97-2481 (1997). Gov't Code § 552.301, .302.

⁵You submitted to this office separate sets of documents responsive to each of the four requests. Because a number of these are duplicates, we have marked only some of the documents as a sample of the types of information that may be withheld.

⁶You state that DISD has provided the requestors with invoice amounts and other responsive information for which you do not assert an exception to disclosure.

are pending. We have reviewed the records at issue and the petitions submitted to this office. We agree that the highlighted portions of the billing descriptions which pertain to these pending cases may also be withheld from disclosure under section 552.103(a)⁷. You marked other fee bill descriptions as being excepted from disclosure under section 552.103(a), but failed to explain how section 552.103(a) applies to these other records. Therefore, the remaining information for which you assert section 552.103 may not be withheld under section 552.103(a).

You marked some portions of fee statements that you contend are excepted from disclosure under section 552.107(1) of the Government Code. Section 552.107(1) excepts from disclosure communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 (1991) at 1, 574 (1990) at 3, 462 (1987) at 9-11. Section 552.107(1) does not except from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memos sent. Open Records Decision No. 574 (1990) at 5. We have marked portions of the fee statements that may be withheld from disclosure under section 552.107(1).⁸

You also assert that section 552.108 of the Government Code protects marked portions of the requested information from disclosure. Generally, section 552.108 applies only to records of law enforcement agencies or prosecutors. Open Records Decision No. 493(1988) at 2. However, law enforcement or prosecution records that would otherwise qualify for protection under section 552.108 may be protected even if the records are held by an entity that is not a law enforcement agency or prosecutor, when release would unduly with law enforcement or prosecution of crime. Open Records Decision No. 272 (1981). Also, if an agency conducts an investigation that reveals possible criminal conduct and if the agency intends to report that conduct to appropriate law enforcement agencies, then section 552.108 may protect that information from disclosure. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You indicate that all of the fee statement descriptions that you have marked as protected under section 552.108 pertain to pending criminal investigations that are being conducted by the Investigations Division of the Safety and Security Department of DISD or by the FBI. You assert that these entries reveal names of witnesses and informants, "the scope and focus of the investigations", when the investigations began, what documents are

⁷In making this determination, we assume that this information has not been seen by the opposing parties, because once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982).

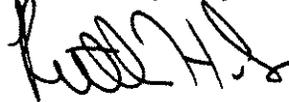
⁸We note that many of the documents for which you asserted section 552.107(1) have been previously ruled upon in Open Records Letter No. 97-2481(1997), and thus are not addressed in this letter.

being reviewed, and “what steps have thus far been taken as part of the investigation.” You argue that release of this information could hinder the pending criminal investigations, possibly lead to destruction of pertinent information, and hinder the ability of these law enforcement entities “to conduct their investigations quietly and confidentially.” Section 552.108(a)(1) provides an exception from disclosure for information that is held by a law enforcement agency or prosecutor and that deals with the detection, investigation, or prosecution of crime, when release of such information would interfere with the detection, investigation, or prosecution of crime. We agree that you have, in this situation, demonstrated the applicability of section 552.108(a)(1) to the information in the fee statements that you have marked as protected under section 552.108.⁹

You assert that some of the fee statement entries are attorney work product that is protected from disclosure under section 552.111 of the Government Code. In Open Records Decision No. 647 (1996), this office addressed the section 552.111 scope of protection for attorney work product, and also the burden that a governmental body must meet in order to show that information is protected under section 552.111. To show that information is protected attorney work product under section 552.111, a governmental body must first show that the work product was created in anticipation of litigation or for trial. Open Records Decision No. 647 (1996) at 3-4. The governmental body also must show that the work product consists of or tends to reveal the thought processes of an attorney in the civil litigation context. *Id.* At 4. The documents submitted to this office are billing statements that appear to have been created for client billing purposes and as internal documentation of work performed. You have not shown the applicability of section 552.111 to the fee statements at issue. Thus, the information is not protected from disclosure by section 552.111.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

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⁹You asserted that some of the names in the fee statement entries are protected not only by section 552.108 but also by the informer’s privilege aspect of section 552.101. Since the entries at issue may be withheld from disclosure pursuant to section 552.108, we need not address your argument concerning the informer’s privilege.

Ref.: 114482, 114910, 114811, 114895

Enclosures: Marked documents

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