



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 21, 1998

Ms. JoAnn S. Wright  
Walsh, Anderson, Brown,  
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P.O. Box 168046  
Irving, Texas 75016-8046

OR98-1293

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115006.

The Bland Independent School District (the "district") received a request for

- a. Those documents containing expenditures for legal fees for the school years 1997 and 1998, to include: (1) who was paid; (2) the amount they were paid; and (3) the services they were paid for.

You claim, however, that some of the information responsive to the other requests is 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.

You first assert that you must withhold certain identifying information because it is confidential by law. You contend that the information you have marked is excepted from disclosure because it contains education records made confidential by the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, or section 552.114 of the Government Code. You must withhold this information only to the extent "reasonable and necessary to avoid personally identifying a particular student." 20 U.S.C. § 1232g(a)(4)(A); Open Records Decision Nos. 462 (1987), 447 (1986); *see also* Open Records Decision Nos. 332 (1982), 206 (1978). In this instance, the redaction of student names will be sufficient to avoid personally identifying a particular students.

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

After reviewing the documents, we conclude that some are related to the litigation. Therefore, the district may withhold the documents which we have marked under section 552.103. 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).

You next claim that other requested portions of the attorney fee bills submitted to the district are excepted from disclosure under the attorney-client privilege. You have highlighted some of the information you seek to withhold. Although you claim that section 552.101 excepts some of the information from disclosure pursuant to the attorney-client privilege, the attorney-client privilege is properly claimed under section 552.107. Open Records Decision No. 574 (1990) at 2. 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. 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.*

That section 552.107(1) protects only the details of the substance of attorney-client communications means that the exception applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). In general, information such as documentation of calls made, meetings attended, or memoranda sent is not protected under this exception. *See* Open Records Decision No. 589 (1991). We have marked the portions of the information that appear to be client confidences. We are unable to determine and you have not explained how or why the remaining information is protected under section 552.107 as attorney advice and opinion or client confidences. The district may withhold the information we have marked. The remaining information, apart from that excepted under sections 552.114 and 552.103 of the Government Code, on the fee bill invoices 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,



Janet L. Monteros  
Assistant Attorney General  
Open Records Division

JIM/glg

Ref: ID# 115006

Enclosures: Marked documents

cc: Mr. Norman George  
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(w/o enclosures)