



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 23, 1998

Ms. Eileen Begle
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR98-1517

Dear Ms. Begle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116066.

The Harris County Attorney's Office (the "county attorney") received a request for all documents that name the requestor. You state that you have already released many documents to the requestor. You contend that the remaining documents responsive to the request are excepted from disclosure pursuant to sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed a representative sample of the documents at issue.¹

Section 552.107(1) of the Government Code protects 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(1) excepts from public disclosure only "privileged information," that is, factual information or requests for legal advice communicated by the client to the attorney and legal advice or opinion rendered by the attorney to the client. Open Records Decision No. 574 (1990) at 5-7. Section 552.107(1) does not, however, protect purely factual information. *Id.* You contend that the submitted documents labeled exhibits D1-D5 are protected by section 552.107(1). We agree. You may withhold these documents from disclosure pursuant to section 552.107(1).

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.

Next, you contend that several documents are excepted from disclosure as attorney work product under section 552.111 of the Government Code. A governmental body may withhold attorney work product from disclosure if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. Open Records Decision No. 647 (1996) at 4. The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories.

If a requestor seeks an attorney's entire litigation file, and a governmental body seeks to withhold the entire file and demonstrates that the file was created in anticipation of litigation, we will presume that the entire file is excepted from disclosure as attorney work product. Open Records Decision No. 647 (1996) at 5 (organization of attorney's litigation file necessarily reflects attorney's thought processes) (citing *National Union Fire Insurance Co. v Valdez*, 863 S.W.2d 458, 461 (Tex. 1993)).

You claim that an attorney's handwritten notes, labeled exhibits D6-D10, are excepted from disclosure as attorney work product. However, you have not met the two-pronged work product burden for these documents. Therefore, we find that you must release these documents to the requestor.

You also claim that two litigation files, Civil Action Numbers H-92-3285 and H-94-4244 and their related appeals, should be protected from disclosure in their entirety. The request for information encompasses these entire files, and it is apparent that these files were created in anticipation and during the course of litigation. Thus, we conclude that you may withhold these entire files from disclosure under section 552.111 as attorney work product.

Lastly, you claim that the litigation file related to Cause Number 97-51317 is excepted from disclosure under section 552.103 of the Government Code. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show 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. You have demonstrated that the litigation file relates to pending litigation in which several county officials have been named

as defendants. We conclude, therefore, that you have met your burden under section 552.103(a) for the litigation file related to Cause Number 97-51317.

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 litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. You may withhold any remaining information in the file from disclosure under section 552.103(a). Finally, we note that 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).

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 116066

Enclosures: Submitted documents

cc: Ms. Barbara Streck Youngs Settle
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(w/o enclosures)