



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 23, 1998

Mr. Roland Castañeda  
General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR98-1521

Dear Mr. Castañeda:

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# 116017.

Dallas Area Rapid Transit ("DART") received an open records request for, among other things, *certain attorney billing statements received by DART*. You state that DART has released to the requestor the billing statements with the redaction of certain portions, which you contend are excepted from required public disclosure pursuant to sections 552.103 and 552.107 of the Government Code.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. Some of the billing statements you submitted to this office are for legal services performed in connection with litigation that is currently pending. We therefore conclude that the information you have marked in those billing statements "relates" to pending litigation for purposes of section 552.103.<sup>1</sup> DART may withhold the marked information in those statements at this time.

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<sup>1</sup>In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103.

We note, however, that you also seek to withhold pursuant to section 552.103 certain attorney billing statements for services rendered in connection with litigation that is no longer pending. The applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). DART may not withhold pursuant to section 552.103 any information pertaining to lawsuits that are not pending. We therefore must address whether the information you have marked on these invoices may be withheld pursuant to section 552.107 of the Government Code.

Section 552.107(1) protects 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.” *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney’s legal advice and client confidences. *Id.* Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. *See also* Open Records Decision No. 589 (1991) (protected information in attorney billing statements) *overruling to extent of conflict* Open Records Decision No. 304 (1982).

Most of the information you have marked consists of neither client confidences nor an attorney’s legal advice. We have marked in orange brackets the portions of the billing statements that DART may withhold pursuant to section 552.107. The remaining portions of these billing statements 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,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/RWP/rho

Ref.: ID# 116017

Enclosures: Marked documents

cc: Ms. Penelope Y. Lary  
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(w/o enclosures)