



March 10, 1999

Ms. Dorcas Green
Walsh, Anderson, Brown, Schulze, & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR99-0670

Dear Ms. Green:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122660.

Navasota Independent School District (the “district”), which you represent, received a request for information concerning legal fees and payments made to attorneys regarding a particular matter. You provided the requestor with some of the requested records, but contend that other information is protected from disclosure under sections 552.101, 552.103, and 552.107. You submitted to this office invoices and billing statements that have been marked to show the portions you consider to be protected from disclosure.

We first note that it is our understanding from your brief that all of the marked portions are related to pending litigation and settlement negotiations.¹ 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. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.), *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 at 4 (1990). You have submitted information showing that there is pending litigation and settlement negotiations. We agree that the marked descriptions are protected from disclosure under section 552.103(a). However, you

¹Your brief asserts that marked portions of account numbers 1972800, 19728009, and 19728015 are related to pending litigation and settlement negotiations. We note that you also marked portions of account numbers 1978012 and 19728008 as related to pending litigation and settlement negotiations.

have not shown that the portions of the invoices and billing statements relating to charges and payments are protected under section 552.103(a).

Billing information that shows time spent working on matters, the amounts charged to a governmental body, and the payments made by a governmental body is generally the type of information that is considered to be public. Gov't Code § 552.022(3) ("information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body" generally public information). Thus, the hours worked, rates, amounts charged and paid, and balances are not protected from disclosure.

You also assert that sections 552.101 and 552.107 protect the marked information from disclosure. We need not at this time consider your other arguments against disclosure of the marked descriptions in the invoices and statements because this information is protected from disclosure under section 552.103(a).² We will address your sections 552.101 and 552.107 arguments against disclosure of the remaining portion of the marked information, which includes the billing rates, hours worked, balances, and amounts charged and paid.

Section 552.101 protects from disclosure information made confidential by other law. You contend that the Family Educational Rights and Privacy Act ("FERPA"), title 20 of the United States Code, section 1232g, in conjunction with section 552.101 of the Government Code, protects some of the marked information from disclosure. We note that, generally, only information which would serve to identify students is excepted from disclosure under FERPA. Open Records Decision No 332 at 3 (1982). As discussed previously, the marked descriptions in the invoices and billing statements are protected from disclosure under section 552.103(a). As the billing rates, hours worked, balances, and amounts charged and paid do not identify any student or parent, this type of information is not protected under FERPA.

Nor does section 552.107 provide a blanket exception for all communications between clients and attorneys or all documents created by an attorney. It excepts only those communications that reveal client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 at 1 (1991), 574 at 3 (1990), 462 at 9-11 (1987). Section 552.107 does not except from disclosure a "basically factual recounting of events." Open Records Decision No. 574 at 5 (1990). It also does not except from disclosure "the attorney's mere documentation of calls made, meetings attended or memos sent . . . if no notes revealing the attorney's legal advice or the client's confidences are included." *Id.* Thus, section 552.107 does not protect from disclosure the balances, hours worked, billing rates, and amounts charged and paid. This type of information must be disclosed.

²The applicability of section 552.103(a) ends once the litigation has 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy". The signature is fluid and cursive, with a large initial "R" and "S".

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 122660

Enclosures: Submitted documents

cc: Mr. John Leflore
1542 Schumacher
Navasota, Texas 77868
(w/o enclosures)