



June 24, 1999

Ms. Alejandra I. Villarreal
Wickliff & Hall
105 South Saint Mary's Street, Suite 700
San Antonio, Texas 78205

OR99-1759

Dear Ms. Villarreal:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125288.

The Alamo Community College District (the "district") received a request for forty-seven categories of documents related to construction of the Northwest Vista College Campus. You seek to withhold from public disclosure documents that are responsive to categories 11, 13, 18, and 23. We assume that you have released to the requestor the remaining requested information. You submit to this office representative samples of the requested information and claims and complaints of the contractor and a subcontractor working on the construction project.¹ You assert that the requested information is excepted from disclosure under sections 552.103 and 552.107(1) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or

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) (where requested documents are numerous and repetitive, governmental body should submit a representative sample; but if each record contains substantially different information, all must be submitted). 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.

employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

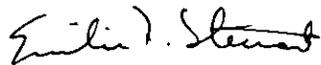
The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (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). The district must meet both prongs of this test for information to be excepted under 552.103(a). The totality of the circumstance that you present indicate that litigation is reasonably anticipated. Also, the information at issue is related to the anticipated litigation. In this instance, you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). Therefore, you may withhold the types of documents submitted to this office with certain exceptions.

Generally, 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 anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, 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 also raise section 552.107 to protect the types of documents submitted. 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.* Attachment B-13 includes several letters between the district and potentially adverse parties that do not constitute "privileged information." You may not withhold these letters under either section 552.103 or section 552.107.

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,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 125288

Encl: Submitted documents

cc: Mr. Donald H. Anderson
Victoria Air Conditioning, LTD.
513 Profit Drive
Victoria, Texas 77901
(w/o enclosures)