



January 5, 2000

Mr. Jace A. Houston
General Counsel
The Subsidence District
Harris-Galveston Coastal Subsidence District
1660 West Bay Area Boulevard
Friendswood, Texas 77546-2640

OR2000-0023

Dear Mr. Houston:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132304.

The Harris-Galveston Coastal Subsidence District (the “district”) received a request for information relating to a settlement agreement and the district’s filing of a non-suit in connection therewith, resolutions and policies of the district regarding litigation, and information the chairman of the district’s board has regarding the requestor as well as information relating to the chairman’s ownership of businesses, service with other organizations, etc. You seek to withhold the requested information under sections 552.103 and 552.107 of the Government Code.

Section 552.103(a) exempts from required public disclosure information

relating to litigation of a civil or criminal nature 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 employment, is or may be a party[.]

To secure the protection of section 552.103(a), 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). Here, you advise that the district is “currently prosecuting a civil suit against” the requestor, and you supply

a copy of the Defendant's Original Answer in such litigation. The Defendant's Original Answer, however, appears to be in the nature of a general denial. Neither it, nor you in your communications with this office, explain the nature of the lawsuit in question. We are unable to determine from the submitted materials whether or to what extent the information at issue here relates to such litigation. Therefore, it is our opinion that you have not established the applicability of the section 552.103 exception to the information at issue here. Accordingly, none of the requested information may be withheld under section 552.103. *See also* § 552.022(a)(3), (4), (8), (9), (10), (13), (14), (15), (18). *But see* Open Records Decision No. 445 (1986) (governmental body not required to create new information).

The attorney-client privilege is incorporated in the exception to disclosure set out in section 552.107(1), which 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 confidential attorney-client communications. *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.

Here, you claim that "any document related to the formulation of settlement offers by the district is covered by the attorney-client privilege." We have reviewed the submitted information and marked those portions, a two page document, for which we believe you have established the applicability of the attorney-client privilege. You may withhold this document under section 552.107(1). The remaining portions of the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

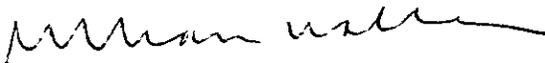
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 132304

Encl. Submitted documents

cc: Mr. James Craig Guetersloh
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Houston, Texas 77095
(w/o enclosures)