OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

March 13, 2000

Ms. Lisa A Brown
Bracewell & Patterson, L. L.P.
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR2000-1002

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132996.

The Chester Independent School District (the "district"), which you represent, received a request for the "[f]ee bills for the years 1996, 1997, 1998 and 1999 submitted and/or paid to Wayne Haglund by [the district]; and copies of all checks made payable to Wayne Haglund or any firm that he was or is associated for [the same time period]." In response to the request, you have submitted for our review attorney fee bills, check copies, a petition filed with a court, and correspondence. You assert that portions of the invoices are excepted from disclosure under sections 552.103, and 552.107 of the Government Code. We have considered the exceptions you assert and reviewed the submitted information.

First, we address your section 552.103 claim in which you argue certain attorney fee bills are excepted from disclosure in their entirety because the litigation to which they relate is pending. Section 552.022(a)(16) of the Government Code states that information in an attorney fee bill is not excepted from disclosure under the Public Information Act (the "Act") unless it is expressly confidential under other law or privileged under the attorney-client privilege. Section 552.103 is not other law that makes the information confidential; therefore, you may not withhold any of the information under section 552.103.

We note that the documents submitted for our review include a petition that has been filed with a court. Section 552.022(a)(17) of the Government Code states that information that is also contained in a public court record is not excepted from disclosure under the Act, unless confidential under other law. Moreover, documents filed with a court are generally considered public. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). We thus determine the petition is not excepted from disclosure and must be released.[1]

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[1]The petition was submitted with the responsive documents and not with your arguments for withholding the responsive documents. We therefore assume the petition is responsive to the present request. If the petition was submitted solely to substantiate your assertion that litigation is pending with regard to some of the responsive documents, and the petition is therefore not within the scope of information that is responsive to the present request, you need not release the petition to the requestor.

We note that the check copies are of checks drawn on district accounts. Section 552.022(a)(3) of the Government Code states that information in an account, voucher, or contract relating to the expenditure of public or other funds by a governmental body is not excepted from disclosure under the Act, unless confidential under other law. We determine the check copies must be released to the requestor.

Next, we address whether the attorney-client privilege applies to the requested information. Section 552.107(1) excepts information from disclosure if:

> it is 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.

Gov't Code § 552.107(1). 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. Section 552.107(1) does not protect purely factual information. *Id.* The attorney general explicitly found that a governmental body may withhold information in an attorney fee bill only to the extent that the information reveals client confidences or the attorney's legal advice. *See* Open Records Decision No. 589 (1991). Moreover, in Open Records Decision No. 589, the attorney general determined that the "attorney-client privilege" exception did not protect a requested list of "phone calls and conferences regarding a particular matter" or indications that an attorney had reviewed documents relevant to the attorney's representation of the government body. We find that portions of the information contained in the requested fee bills are privileged under section 552.107(1). We have marked the information that you may withhold under section 552.107(1). The remaining 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,

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ch

Ref: ID# 132996

Encl. Submitted documents

cc: Mr. Edward T. McFarland
P.O. Box 119
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(w/o enclosures)