



June 29, 2000

Ms. Diane C. Wetherbee  
City Attorney  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2000-2466

Dear Ms. Wetherbee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136610.

The City of Plano (the "city") received a request for information relating to a case pending before the Fifth Circuit Court of Appeals to which the city is a party. The requestor seeks "the Appellants Brief," "the schedule for oral argument," "who you intend will argue the appeal," "the strategy for oral argument," and "all attorneys fees submitted to [the city] by Figari, Davenport and Graves, L.L.P." relating to the appeal. You have submitted for our review a representative sample of information that is responsive to that portion of the request seeking "all attorneys fees."<sup>1</sup> You assert that this information is excepted from disclosure

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<sup>1</sup>As indicated above, the request encompasses more information than that which you have submitted for our review. Your arguments and asserted exceptions pertain only to the sample of information you have submitted to this office. A governmental body has a good faith duty to relate a request to that information which it holds. Open Records Decision No. 561 at 8 (1990). We therefore assume that you have released to the requestor all of the information that is responsive to the request, other than that information from which you have provided a representative sample for our review. If you have not yet released the other responsive information, you must do so at this time. See Gov't Code §§ 552.301, .302. We additionally assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole that you seek to withhold. See Open Records Decision Nos. 499 (1988); 497 (1988). 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.

under sections 552.101, 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 argument under section 552.101 that the information is excepted from disclosure in its entirety because it is confidential by law. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” We note that you rely upon the holding in Open Records Decision No. 304 (1982) in which this office determined that certain attorney fee bills were excepted from disclosure in their entirety under the statutory predecessor to section 552.101 as information made confidential by judicial decision. Section 552.022(a)(16) of the Government Code now provides that information “that is *in* a bill for attorney’s fees” is not excepted from required disclosure unless the information is “expressly confidential under other law” or is “privileged under the attorney-client privilege.” See Gov’t Code § 552.022(a)(16)(emphasis added). This provision, by its express language, does not permit the *entirety* of an attorney fee bill to be withheld. See also Open Records Decision No. 589 (1991) (information in an attorney fee bill excepted only to the extent that the information reveals client confidences or the attorney’s legal advice). Moreover, we do not today believe that the attorney-client privilege is contemplated within the scope of “other law” that makes information “expressly confidential.” Indeed, in 1990 this office declared:

[W]e do not consider discovery privileges to be covered under section [552.101] of the Act. Such information is “privileged” only to the extent that a court in a particular case deems it to be so. We do not believe that this is the type of information that section [552.101] was intended to protect as information deemed confidential by law.

Open Records Decision No. 575 at 2 (1990). Thus, Open Records Decision No. 304 has been overruled by subsequent decisions of this office, and by section 552.022(a)(16) of the Government Code.

Next, we address your section 552.103 claim in which you argue the attorney fee bills are excepted from disclosure in their entirety because the litigation to which they relate is pending. As noted above, the information at issue is subject to section 552.022(a)(16) of the Government Code. Section 552.103 is a discretionary exception to disclosure and does not constitute other law that makes information confidential; therefore, you may not withhold any of the information under section 552.103.

Finally, we address whether you have demonstrated that 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.* In Open Records Decision No. 589, this office 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. Open Records Decision No. 589 at 2 (1991). You have marked none of the specific information in the submitted samples as revealing a client confidence, nor do we find that any of the entries in the fee bills reveal an attorney's legal advice or opinion. Because you have not demonstrated the applicability of the attorney-client privilege to the information, we conclude that the information must be released in its entirety.

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).

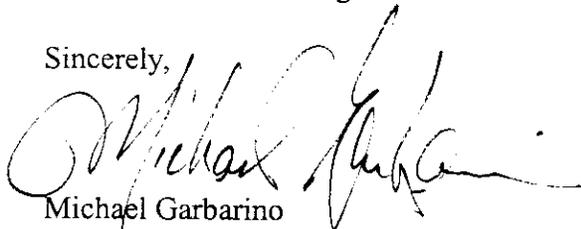
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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/pr

Ref: ID# 136610

Encl. Submitted documents

cc: Mr. David LaBrec  
Strasburger & Price, L.L.P.  
901 Main Street  
Dallas, Texas 75202-3794  
(w/o enclosures)