



November 7, 2000

JoAnn S. Wright
Walsh, Anderson, Brown, Schulze
& Aldridge, P.C.
511 East John Carpenter Freeway, Suite 340
Irving, Texas 75062

OR2000-4340

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141212.

The Grapevine-Colleyville Independent School District (the "district"), which you represent, received a request for six categories of information pertaining to billing statement entries for services rendered by Gardere & Wynne, L.L.P to the district, specifically, any notes, memoranda, recordings or correspondence prepared in relation to various meetings, legal research and other legal work. You inform this office that you have released a portion of the requested information, and that another portion does not exist. You claim that the remaining requested information is excepted from disclosure under sections 552.027, 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, with regard to the information requested which you assert does not exist, chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. Open Records Decision No. 362 (1983); *see* Open Records Decision No. 452 (1986) (document not within chapter 552's purview if it does not exist when governmental body receives a request for it). Nor is a governmental body required to prepare new information to respond to a request for information. Open Records Decision No. 605 (1992), 572 (1990), 416 (1984). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 at 8 (1990). If the district holds information from which the requested information can be obtained, the district must provide that information to the requestor, unless it is otherwise excepted from disclosure.

1

We first address your argument under section 552.101. Section 552.101 protects information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision. This office has concluded that section 552.107(1), and not section 552.101, governs a claim that requested information represents a protected attorney-client communication. *See* Open Records Decision Nos. 575 at 2 (1990) (construing predecessor statute), 574 at 2 (1990) (same). Section 552.107(1) provides in relevant part that information is excepted from required public 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 Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct. Gov't Code § 552.107(1).

Although the scope of section 552.107(1) would appear to be co-extensive with that of rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, which prohibits an attorney from divulging "confidential information," this office has concluded that such an interpretation of rule 1.05 would be in potential conflict with the purposes of chapter 552 of the Government Code. *See* Open Records Decision No. 574 at 4-5 (1990) (construing predecessor statute). Accordingly, this office has determined that section 552.107(1) protects only what rule 1.05 describes as "privileged" information, *i.e.*, information that represents confidential communications between attorney and client. *Id.* at 5. "Unprivileged" information, as defined by rule 1.05, is not excepted from disclosure under section 552.107(1). *Id.* Thus, section 552.107(1) excepts from disclosure only factual information or requests for legal advice communicated by the client to the attorney and legal advice or opinion rendered by the attorney to the client or to an associated attorney in the course of rendering legal services to the client. *Id.* at 7-8.

Upon review of the submitted information, we conclude that you have not established that the information contained in Exhibit E is privileged attorney-client communications, and therefore we find that this information may not be withheld under section 552.107(1). *See, e.g.*, Open Records Decision No. 589 (1991). Further, although you also contend that the records at issue consist of attorney work product, you have not demonstrated, nor is it apparent from the records at issue, that the requested information was created for trial or in anticipation of litigation under the test articulated in *National Tank v. Brotherton*, 851 S.W.2d 193 (Tex. 1993). *See* Open Records Decision No. 647 (1996). Therefore, the information may not be withheld as attorney work product¹. However, we find that all of the documents contained in Exhibit F are protected attorney-client communications, and this

¹In Open Records Decision No. 647 (1996), this office concluded that, if civil litigation for which attorney work product was created has concluded, such information may be withheld under section 552.111 of the Government Code. If, however, the litigation is currently anticipated or pending, the information may be withheld under either section 552.103 or section 552.111. Thus, an argument that requested information is excepted from disclosure as attorney work product should be made under section 552.103 or section 552.111 of the Government Code.

information is therefore excepted from disclosure under section 552.107(1) of the Government Code.

We next address your argument under section 552.027 of the Government Code. Section 552.027 provides:

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

This section is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. Therefore, section 552.027 excludes commercially available research material from the definition of "public information." However, if any information in a book or publication is "made part of, incorporated into, or referred to in a rule or policy of" the district, the district must allow inspection of that information. Gov't Code § 552.027(c).

Upon review of the information submitted in Exhibit E, we do not believe that in this case, the copy of a published Attorney General opinion, or handwritten summaries of statutes, are "a commercial book or publication purchased or acquired by the [district] for research purposes" under section 552.027. The requestor here seeks specific information related to legal services performed for the district by outside counsel. The fact that commercially available research materials happen to be responsive to the request does not, in our view, bring such materials within the ambit of section 552.027. Accordingly, we do not believe that the information submitted in Exhibit E may be withheld under section 552.027.

To summarize, you may not withhold any of the information in Exhibit E under either 552.107 of the Government Code as protected attorney-client communications, or as attorney work product. Nor may the information in Exhibit E be withheld under section 552.027.

Therefore, it must be released to the requestor. You may withhold all of the information in Exhibit F under section 552.107.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,

A handwritten signature in black ink that reads "Michael A. Pearle". The signature is written in a cursive, flowing style.

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/pr

Ref: ID# 141212

Encl. Submitted documents

cc: Mr. Michael Tate
News & Times
2319 Hall - Johnson Road
Colleyville, Texas 76034
(w/o enclosures)