

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



October 10, 2001

Mr. Sal Levatino
Attorney at Law
1524 South IH-35, Suite 234
Austin, Texas 78704

OR2001-4584

Dear Mr. Levatino:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152432.

On June 14, 2001, the Denton County Fresh Water Supply Districts (the "districts") received a request for information pertaining to certain Fresh Water Supply Districts in Denton, Kaufman, and Parker Counties. You inform us that you represent the law firm of Leonard Hurt Frost Lilly & Levin (the "Leonard firm"), which acts as custodian of records for the districts. You state that the districts had made certain records, which the districts had identified as responsive to the request for information, available for review by the requestor. You further inform us that after the requestor had viewed the records made available to him and requested copies, the Leonard firm apparently identified some sixteen pages of documents that you contend were released to the requestor by mistake.¹ You now claim that the requested information is not public information subject to the Act, or, alternatively, that the requested information is excepted from disclosure under sections 552.101, 552.107, 552.110, and 552.111 of the Government Code. We have also received comments from the law firm representing the requestor and from Castle Hills Development Corporation, a third party whose interests may be affected by public disclosure of a portion of the information at issue. *See* Gov't Code § 552.305 (permitting interested third party to submit

¹Although this office has held that a governmental body that voluntarily furnishes information to a newspaper may not later claim that that information may be withheld from others, it has never held that information which is not voluntarily released by a governmental body, but which nevertheless finds its way into the hands of a member of the general public, is henceforth automatically available to everyone. Open Records Decision Nos. 387 (1983), 376 (1983), 162 (1977). In our opinion, the Public Information Act does not preclude a governmental body from invoking one or more of the act's exceptions to protect from further public disclosure information which has been released on a limited basis through no official action, and against the wishes and policy of, the governmental body. *See* Open Records Decision No. 387 (1983).

to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances).

You requested a decision from this office on July 23, 2001, but did not submit any of the information at issue, nor a copy of the original request for information as required by section 552.301. This office, pursuant to section 552.303, requested additional information which we determined was required in order for this office to render a decision in this matter. In response, you provided only a portion of the information requested. Section 552.303 provides in pertinent part:

- (d) A governmental body notified under Subsection (c) shall submit the necessary additional information to the attorney general not later than the seventh calendar day after the date the notice is received.
- (e) If a governmental body does not comply with Subsection (d), the information that is the subject of a person's request to the governmental body and regarding which the governmental body fails to comply with Subsection (d) is presumed to be subject to required public disclosure and must be released unless there exists a compelling reason to withhold the information.

You did not provide the requested information pertaining to the "consulting agreements" to this office. Because you did not submit the information at issue, we are unable to address your arguments that it does not meet the definition of public information subject to the Act or is excepted from disclosure. Section 552.303(e) provides that the information is presumed to be subject to required public disclosure absent a compelling reason to withhold it. Because you have not submitted the information you have described as "consulting agreements," we have no basis for determining whether a compelling reason exists for withholding it. Thus, we have no choice but to order the information you have described as "consulting agreements" released pursuant to section 552.303. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below. We caution that the distribution of confidential information constitutes a criminal offense. *See* Gov't Code § 552.352.

In response to the section 552.303 letter, you provided this office with a copy of the "paralegal memo." You assert that this information is not public information and, therefore, is not subject to the Act. We first address this threshold issue. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it. We note that information held by a law firm as the agent of a governmental body is within the constructive possession of

the governmental body, and therefore subject to the Act. Open Records Decision No. 462 (1987). Although you acknowledge that the information at issue was contained in the districts' client file, you assert that the memo was not prepared for the districts. You further state that the district has no right of access to the memo, but provide no explanation nor authority for this conclusory assertion. This office has previously held that a client generally has a right of access to papers and other documents held in its attorney's file. Open Records Decision No. 499 (1988). However, based upon our review of the information at issue, we find that the information consists of internal notes which have been generated primarily for the attorney's purposes in working on the client's problem. Thus, we conclude that the memo is not public information, and therefore is not subject to release pursuant to the Act. *See* Gov't Code §552.002(a). Therefore, you may withhold the submitted memo from public disclosure.

In summary, the information you have described as "consulting agreements" must be released pursuant to section 552.303. The "paralegal memo" is not public information, and is not subject to release under the Act.

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 Dept. 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 Hadassah Schloss at 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 152432

Enc: Submitted documents

c: Mr. Brooks Egerton
Mr. Reese Dunklin
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)

Mr. Gary R. Rice
Law Office of Gary R. Rice, P.C.
4925 Greenville Avenue, Suite 1300
Dallas, Texas 75206
(w/o enclosures)

Mr. Chris R. Bright
Castle Hills Development Corporation
4228 North Central Expressway, Suite 300
Dallas, Texas 75206
(w/o enclosures)

CAUSE NO. GN103438

LEONARD, HURT, FROST, LILLY &
LEVIN, a professional corporation, in both
its capacity as official custodian of records
for Denton County Fresh Water Supply
District No. 1-A and in its individual
capacity as a private law firm,

Plaintiff,

VS.

GREG ABBOTT, ATTORNEY
GENERAL OF THE STATE OF TEXAS,
IN HIS CAPACITY AS ATTORNEY
GENERAL,

Defendant.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

THE DALLAS MORNING NEWS,

Intervenor,

VS.

DENTON COUNTY FRESH WATER
SUPPLY DISTRICT 1-A,

Third-Party Defendant

200th JUDICIAL DISTRICT

AGREED ORDER OF DISMISSAL

On this date, Plaintiff LEONARD, FROST, LEVIN & VAN COURT, successor to
LEONARD, HURT, FROST, LILLY & LEVIN, a professional corporation, in both its capacity
as official custodian of records for Denton County Fresh Water Supply District No. 1-A and in
its individual capacity as a private law firm, and Defendant GREG ABBOTT, Attorney General
of Texas, and Intervenor THE DALLAS MORNING NEWS and Third-Party Defendant

DENTON COUNTY FRESH WATER SUPPLY DISTRICT 1-A moved that this cause be dismissed based on the attached SETTLEMENT AGREEMENT. This cause of action is brought under the Public Information Act (PIA), Tex. Gov't Code ch. 552. Plaintiff filed this lawsuit challenging Attorney General's open records ruling, OR2001-4584, with regard to the CONSULTING AGREEMENT. The Dallas Morning News intervened in the lawsuit in support of the Attorney General's ruling in OR2001-4584 with regard to the CONSULTING AGREEMENT and to challenge the Attorney General's ruling regarding the PARALEGAL MEMO. The Dallas Morning News's lawsuit involving the PARALEGAL MEMO was severed and assigned a separate cause number, GN300735.

Pursuant to the Settlement Agreement, The Dallas Morning News has agreed to withdraw its request for the CONSULTING AGREEMENT. Under these circumstances, the parties agree that the letter ruling of the Attorney General OR2001-4584 will not serve as a prior ruling under Tex. Gov't Code §522.301(f).

Therefore, there is no longer a live controversy between the parties. Accordingly, the parties request that the Court enter this Agreed Order of Dismissal.

The Court is of the opinion that entry of an agreed order of dismissal is appropriate.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that Plaintiff's cause of action against Defendant and Intervenor and Intervenor's cause of action against Plaintiff and Third -Party Defendant in Cause No. GN103438 is dismissed with prejudice in all respects.

SIGNED this the _____ day of _____, 2004.

DISTRICT JUDGE

AGREED:

YORK, KELLER & FIELD, L.L.P.

By: *Larry F. York*

Larry F. York
State Bar No. 22164000
Mary F. Keller
State Bar No. 11198299
1265 Frost Bank Plaza
816 Congress Avenue
(512) 867-1616
(512) 867-1617 (fax)

Sal Levatino
State Bar No. 12245000
LAW OFFICES OF SAL LEVATINO
1524 South 1-35, Suite 234
Austin, TX 78704
(512) 474-4462
(512) 482-0051

ATTORNEYS FOR PLAINTIFF and THIRD -PARTY DEFENDANT

JONES DAY

By: *Deborah S. Sloan*

Deborah Savarese Sloan
State Bar No. 00786230
Stephanie D. Newkirk
State Bar No. 24002688
Terrence M. Murphy
State Bar No. 14707000
2727 Harwood Street
Dallas, TX 75201-1515
214-220-3939
214-969-5100 (fax)

ATTORNEYS FOR INTERVENOR DALLAS MORNING NEWS

By: *B. Loudermilk*

Brenda Loudermilk
State Bar No. 12585600
Assistant Attorney General
Administrative Law Division
300 W. 15th Street, 12th Floor
Austin, TX 78701
512-475-4292
512-320-0167 (fax)

ATTORNEYS FOR DEFENDANT GREG ABBOTT, ATTORNEY GENERAL

CAUSE NO. GN103438

LEONARD, HURT, FROST, LILLY &
LEVIN, a professional corporation, in both
its capacity as official custodian of records
for Denton County Fresh Water Supply
District No. 1-A and in its individual
capacity as a private law firm,

Plaintiff,

VS.

GREG ABBOTT, ATTORNEY
GENERAL OF THE STATE OF TEXAS,
IN HIS CAPACITY AS ATTORNEY
GENERAL,

Defendant.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

THE DALLAS MORNING NEWS,

Intervenor,

VS.

DENTON COUNTY FRESH WATER
SUPPLY DISTRICT 1-A,

Third-Party Defendant

200th JUDICIAL DISTRICT

AND

CAUSE NO. GN300735

LEONARD, HURT, FROST, LILLY &
LEVIN, a professional corporation, in both
its capacity as official custodian of records
for Denton County Fresh Water Supply
District No. 1-A and in its individual
capacity as a private law firm,

Plaintiff,

IN THE DISTRICT COURT

2. On behalf of the District, Leonard Hurt asserted that two of the documents requested were not public records within the definition of the Act and refused to provide copies to DMN. The first document is a two page memo dated September 19, 1989 from a paralegal to an attorney, with four pages of legislative material attached ("PARALEGAL MEMO"). The second document consists of two consulting agreements, plus attachments, totaling 15 pages ("CONSULTING AGREEMENT").

3. Subsequently, in letter ruling OR2001-4584, the Attorney General's Office held that the PARALEGAL MEMO was not a public record, but that the CONSULTING AGREEMENT was required to be disclosed because the District failed to submit them to the Attorney General's Office for review.

4. Leonard Hurt filed suit against the Attorney General under the Act on October 17, 2001, challenging the ruling regarding the CONSULTING AGREEMENT. DMN intervened in that action.

5. On June 28, 2002, DMN was granted a summary judgment with regard to the PARALEGAL MEMO. The Court denied cross motions for summary judgment on the CONSULTING AGREEMENT.

6. By agreement, the parties severed DMN's action against the District as to the PARALEGAL MEMO and the resulting summary judgment order from the rest of the case, so that the summary judgment order could be appealed to the Third Court of Appeals. DMN filed a Motion for Attorney's Fees, Costs and Sanctions in the severed action.

7. As a result of the severance, there are two lawsuits pending before the Judicial District Courts of Travis County, Texas involving this matter: Cause No. GN103438 (involving the CONSULTING AGREEMENT) in the 200th Judicial District and Cause No. GN 300735 (involving the PARALEGAL MEMO) in the 261st Judicial District.

8. In order to avoid the uncertainties, expense and delay of further litigation among the parties, the Signatories desire to settle the two lawsuits and to resolve all matters that are or could be currently in dispute between them.

AGREEMENTS

In consideration of the recitals set forth above, the covenants, terms, representations, conditions and releases set forth below, and other good and valuable consideration, the sufficiency of which is expressly acknowledged, the Signatories agree as follows:

9. Leonard Hurt, as custodian of records for the District, and the District agree that the District through its custodian of records shall disclose the PARALEGAL MEMO to DMN as a public record immediately upon the execution of this agreement. Leonard Hurt and the District do not object to counsel for DMN disclosing a copy of the PARALEGAL MEMO to DMN immediately upon the execution of this agreement.

10. In consideration for the release of all remaining claims, DMN has been paid \$165,000.

11. DMN agrees to withdraw its request for the CONSULTING AGREEMENT and to make no future request for the CONSULTING AGREEMENT that is the subject of this litigation.

12. DMN, through its attorney Jones Day, and the Attorney General agree to return to the District all of the copies of the CONSULTING AGREEMENT that they received through discovery in this case.

13. In light of the DMN's withdrawal of its request for the CONSULTING AGREEMENT, Greg Abbott, the Attorney General of Texas, agrees that OR2001-4584, the letter ruling issued in this matter, will not serve as a prior ruling under Tex. Gov't Code § 552.301 (f) for the CONSULTING AGREEMENT that was the subject of this litigation.

14. The District shall dismiss its claims against the Attorney General and DMN and DMN shall dismiss its claims against the District and Leonard Hurt in Cause No. GN 103438 and Cause No. GN 300735 pursuant to the Agreed Orders of Dismissal, attached as Exhibit A and B.

RELEASES

15. In consideration of the warranties, representations, and mutual covenants contained in this Agreement, the parties and their agents, employees, attorneys, and successors in interest, hereby completely release, acquit and forever discharge each other party from any and all claims, liabilities, costs, attorneys' fees, sanctions and damages of any nature arising out of the DMN's request for information in June 2001 to the Districts and the subsequent litigation.

ENTIRE AGREEMENT

16. The Agreement constitutes the entire understanding and agreement of the Signatories hereto, and supersedes prior understandings and agreements, if any, among such Signatories with respect to the subject matter hereof. There are no representations, agreements, arrangements or understandings, oral or written, concerning the subject matter of this Agreement between and among the Signatories hereto, which are not fully expressed or incorporated by reference herein. The Signatories hereto have consulted with their respective attorneys concerning the meaning and import of this Agreement, and each has read this Agreement, as signified by the signatures hereto. Each party executes this Agreement after receiving the advice of counsel for the purpose and consideration herein expressed.

WAIVER AND MODIFICATION

17. Any failure of forbearance by any of the Signatories hereto to exercise any right or remedy with respect to enforcement of this Agreement or any instrument executed in connection herewith shall not be construed as a waiver of any such party's rights or remedies,

nor shall such failure or forbearance operate to modify this Agreement. This Agreement may not be modified except by a written instrument signed by all of the Signatories or their legal representatives.

THE SIGNATORIES HAVE READ THIS AGREEMENT CAREFULLY AND UNDERSTAND IT.

Date: _____, 2004

Leonard, Frost, Levin & Van Court, A
Professional Corporation
As Successor to:
Leonard, Hurt, Frost, Lilly & Levin

By: _____

Date: February 10, 2004

Denton County Fresh Water Supply District 1-A

By: *Gaylord S. Ocon*
Print Name: Gaylord S. Ocon
Title: President

Date: March 3, 2004

Greg Abbott, Attorney General of Texas

By: *B. Henderson*

Date: February 18, 2004

The Dallas Morning News

By: *Frenda C. Madday*

nor shall such failure or forbearance operate to modify this Agreement. This Agreement may not be modified except by a written instrument signed by all of the Signatories or their legal representatives:

THE SIGNATORIES HAVE READ THIS AGREEMENT CAREFULLY AND UNDERSTAND IT.

Date: February 9, 2004

Leonard, Frost, Levin & Van Court, A Professional Corporation
As Successor to:
Leonard, Hurt, Frost, Lilly & Levin

By: Tom Leonard, President

Date: February 9, 2004

Denton County Fresh Water Supply District 1-A

By: Wing Shu

Date: _____, 2004

Greg Abbott, Attorney General of Texas

By: _____

Date: February 18, 2004

The Dallas Morning News

By: Frank O. Muller