



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

December 19, 1990

Ms. Cynthia D. Swartz  
Attorney for College Station I.S.D.  
3432 Greystone Drive, Suite 200  
Austin, Texas 78731

OR90-581

Dear Ms. Swartz:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10933.

The district received an open records request for documentation of the total dollars spent by the district on attorneys fees in connection with a particular special education case that culminated in a hearing before the Texas Education Agency [TEA]. The requestor specified that he seeks records documenting the number of hours spent on this case by attorneys, invoices from attorneys for the district for services rendered, and vouchers showing payment of such invoices. You have submitted representative samples of the invoices at issue.

You contend that the requested information comes under the protection of sections 3(a)(3) and 3(a)(7) of the Open Records Act. You state:

It is apparent upon review of the attached invoice issued from our office that release of the requested information would constitute a revelation of the work product of our firm and would be a violation of the attorney/client privilege. Disclosure of the documents [the requestor] requests would compromise this firm's ethical duties to its client.

In Open Records Decision No. 429 (1985), this office determined that the work product doctrine "merely represents one aspect of section 3(a)(3) information relating to litigation." Consequently, in order to withhold attorney work product from the public, the necessary tests for

section 3(a)(3) protection must be met. To secure the protection of section 3(a)(3), a governmental body must first demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. Open Records Decision No. 328 (1982) (copy enclosed).

In your letter, you assert that the information contained in the invoices related to pending litigation before the TEA. This office has learned, however, that the special education case to which you referred was closed more than one month after the district received the open records request. You have submitted no evidence to this office that otherwise indicates that the case is pending. Based on the facts before us, this office is unable to make the requisite determination that further litigation regarding this matter is reasonably anticipated; section 3(a)(3) is therefore inapplicable with regard to any information contained in the invoices.

You also claim the protection of section 3(a)(7). In instances where an attorney represents a governmental entity, section 3(a)(7)'s protection of attorney-client confidentiality extends only to matters within the attorney-client privilege, e.g. client confidences and the attorney's legal opinion and advice. Open Records Decision No. 574 (1990) (copy enclosed). Although the invoices submitted to this office contain notations that a privileged communication may have taken place, they do not reveal the substance of those communications, with the possible exception of one phrase, which we have marked. None of the rest of the documents submitted to this office contain the type of information section 3(a)(7) was intended to protect. See id.

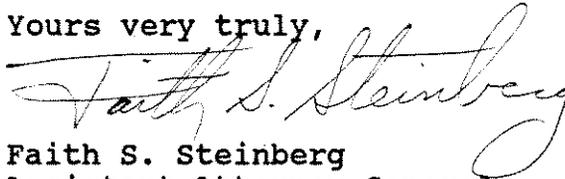
Consequently, section 3(a)(7) does not close up any of the information contained in the invoices submitted to this office, except for the one clause mentioned above. If in reviewing the enclosed open records decision you believe that other invoices may also contain the substance of privileged communications, you may submit those invoices to this office for an additional open records determination. All other information contained in the invoices must, however, be released at this time.

Finally, you state that the district's insurance carrier, rather than the district itself, is responsible for payment of attorney fees and that the "vouchers showing payment" are in the possession of neither the district nor its attorneys. Although the Open Records Act does not require a governmental body to obtain information not in its

possession or to prepare new information in response to a requestor, Open Records Decision No. 445 (1986), some compilation of information may be required under the act. Attorney General Opinion JM-672 (1987). If the district or its law firm possesses other records that contain the information sought in the request, the requestor must be advised of the types of documents available so that he may modify his request. Cf. Open Records Decision No. 87 (1975).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-581.

Yours very truly,



Faith S. Steinberg  
Assistant Attorney General  
Opinion Committee

FSS/RWP/le

Ref.: ID# 10933

Enclosure: Open Records Decision Nos. 574, 328

cc: Craig Borchardt  
Pastor  
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