



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

March 13 1991

Honorable Val Clark Beard
County Attorney
County of Brewster
P. O. Box 668
Alpine, Texas 79831

OR91-135

Dear Ms. Beard:

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# 11336.

Several Brewster County officials received an identical open records request for various records pertaining to the Valencia v. Wiggins lawsuit recently heard in U.S. District Court. Because you are the only one of those officials to request an open records decision from this office, and because you also address the public nature of records held only by the other officials, we interpret your request as being on their behalf as well.

The requestor first seeks

[a]ll bills, vouchers, cancelled checks, contracts, memorandums, etc. relating to payments of public funds . . . between Brewster County and the law firms Bickerstaff, Heath and Smiley; Gray and Becker; and attorney Rod Ponton, or any other legal entity involved in this case.

You state that bills for expenses, vouchers, cancelled checks, and contracts are available to the requester in the offices of the county treasurer and county clerk. You contend, however, that "detailed billings" from the law firms come under the protection of the attorney-client privilege aspect of section 3(a)(1), as provided in Open Records Decision No. 399 (1983), as well as the protection of sections 3(a)(3) and 3(a)(7).

We initially note that in Open Records Decision No. 574 (1990) (copy enclosed), this office determined that although section 3(a)(1) of the act has frequently been cited in the past to protect information coming within the attorney-client privilege, the privilege is more specifically covered under section 3(a)(7), which protects

matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure; (footnote omitted.)

In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's written advice and privileged attorney-client communications. Open Records Decision No. 574. Although the invoices submitted to this office contain notations that privileged communications may have taken place, only a very few of the notations reveal the substance of privileged communications. We have marked those portions of the invoices that may be withheld pursuant to section 3(a)(7).

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 Nos. 452 (1986); 360 (1983). Further, the governmental body's attorney must show that the requested material relates to the litigation. See Open Records Decision No. 551 (1990).

The Valencia lawsuit was brought by an inmate of the Brewster County Jail who was found to be the victim of excessive force by a sheriff's deputy. Although several county officials were named as defendants in the lawsuit, all but the deputy were ultimately dismissed from liability. Because the deputy has filed an appeal in this case, you contend that the county and its officials continue to be a party to the litigation. This office agrees that until such time as the appellant's brief is filed and the issues before the appellate court are established, the county and its officials may reasonably anticipate being parties to the appeal and any subsequent remand of the case. This office has reviewed the contents of the itemized billing statements and has determined that you may withhold only that information that tends to reveal attorney work product performed as part of the defense of the Valencia trial; the remaining information in the invoices relates only tangentially to the legal matters in dispute during the trial. We have marked representative samples of the types of information in the invoices that you may withhold pursuant to section 3(a)(3).

You further contend that the billing statements may be withheld pursuant to section 3(a)(3) because of other anticipated litigation, i.e. the county's lawsuit against its insurance carrier for refusing to absorb the costs of the county's legal defense for reasons including what the carrier represents as "unreasonably high" legal fees. We note that although the issue as to the reasonableness of the fees might in other circumstances act to protect from public disclosure the amounts of legal fees assessed against the county, see generally Open Records Decision No. 551, in this instance the insurance carrier has been granted full ac-

cess to the billing statements during the course of its ongoing correspondence with the county and the county's defense attorney. Consequently, there is no justification for now withholding pursuant to section 3(a)(3) any information contained in the billing statements as it relates to this particular litigation. See, e.g. Open Records Decision No. 349 (1982). You may therefore withhold at this time only that information contained in the billing statements that tends to reveal privileged attorney-client communications and attorney work product.

The requestor next seeks

[c]correspondence, memoranda, telephone logs, briefs, etc. between the above mentioned law firms and any Brewster County officials.

You contend that a previous open records determination by this office, OR90-088 (1990), governs this portion of the open records request and that all correspondence between county officials and their attorney may be withheld pursuant to the attorney-client privilege aspect of section 3(a)(7). As noted above, however, in this instance the attorney-client privilege protects only an attorney's written advice and privileged attorney-client communications, Open Records Decision No. 574; Open Records Letter OR90-088 is hereby overruled to the extent that it suggests otherwise. We have marked representative samples of the type of information contained in the correspondence that may be withheld pursuant to the attorney-client privilege; the remaining information must be released.

The requestor's third request is for

material relating to an alleged assault committed in December 1989 in Marathon by Raul Valencia.

You state that your office does not have any materials as described by the requestor; you need not, therefore, comply with this portion of the request. See Open Records Decision No. 445 (1986).

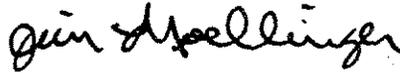
Finally, the requestor seeks

[m]inutes, agendas, tape recordings, etc. of all meetings, including executive sessions, of Commissioners Court concerning this matter. Specifically I seek all records concerning the commissioners court's decision to defend Garry D. Wiggins, the former Brewster County deputy who was indicted in October 1989 for violating Valencia's civil rights.

You state that tape recordings and minutes of all open meetings of the Brewster County Commissioners Court are available to the public in the county clerk's office. You must, however, withhold the tape recordings and certified agendas of executive sessions of the commissioners court pursuant to section 2A(c) of V.T.C.S. article 6252-17. You further state that the commissioners court possesses no records pertaining to Valencia other than copies of the pleadings to that lawsuit, to which the requestor has presumably been granted access. You need not comply further with this request. Open Records Decision No. 445.

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 OR91-135.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/RWP/lcd

Ref.: ID# 11336
ID# 11407
ID# 11564
ID# 11698

Enclosures: Open Records Decision No. 574
Marked documents

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