



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1994

Ms. Michele L. Gilmour
Gibson, Ochsner & Adkins, L.L.P.
500 First National Bank Building
Eighth and Taylor
Amarillo, Texas 79101

OR94-287

Dear Ms. Gilmour:

On behalf of the Caprock Hospital District (the "district"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25468.

The district has received two requests for copies of attorney fee bills: the first for bills dated from November 1993 to March 15, 1994, and the second for bills dated from March 15, 1994, to May 17, 1994.¹ You state that the district has released to the requestors the statements with total amounts for each of three law firms that the district retained during the period at issue and those portions of the legal bills reflecting legal services for the district that are not the subject of your request to the attorney general here. The district wishes to withhold from the requestor, however, those portions of the bills relating to various litigation in which the district is involved and portions of the bills that the district believes are exempt from required public disclosure for other reasons. You therefore claim that the district may withhold these portions of the attorney fee bills pursuant to sections 552.101, 552.103, and 552.107 of the Government Code.

You explain that the district currently is involved in four lawsuits, all relating to the district's termination of Dr. Tommy Swate. Additionally, the district has given notice of appearance in a bankruptcy proceeding Dr. Swate filed in United States Bankruptcy Court in Houston. During the time period at issue, November 1993 through May 17, 1994, the district retained three different law firms: Jones, Flygare, Galey, Brown &

¹The individual who made the first request, ID# 25468, sought four additional categories of information, but we understand that the district has released to the requestor the information in these four categories. Similarly, the individual who made the second request sought seven additional categories of information. You have made no claims that the information in these seven categories is excepted from required public disclosure. We therefore assume that the district has released or will release that information to the requestor.

Wharton, which served as the district's general counsel from November 1, 1993, through December 15, 1993, and which served as counsel during the entire period in the case you refer to as "CHD [Caprock Hospital District] v. Swate;" Gibson, Ochsner & Adkins, which served as general counsel to the district from December 16, 1993, through the present and which served as counsel during the entire period in the case you refer to as "Walls v. CHD;" and Fulbright and Jaworski, which served as counsel during the entire period in the case you refer to as "Swate v. CHD."

Section 552.103(a) of the Government Code excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). You have listed several items that you believe the district may withhold pursuant to section 552.103 of the Government Code² because the information relates to the pending litigation. We have reviewed the information and agree that section 552.103 authorizes the district to withhold the information you have listed. For your convenience, we have marked the information that you may withhold under this section.

In reaching this conclusion, however, we assume that the opposing party to the litigation previously has not had access to the records at issue; absent special circumstances, once all parties to the litigation have obtained particular information, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, the district cannot now justify withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

²We understand you to incorporate into the information you believe § 552.103 authorizes the district to withhold all of the information the district believes is confidential under § 552.101 of the Government Code. We therefore need not consider at this time your claims that § 552.101 excepts some of the information from required public disclosure.

You contend that section 552.107 exempts certain other information, which you list, from required public disclosure. Section 552.107(a) excepts

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 Rules of the State Bar of Texas[.]

This office considered the scope of the statutory predecessor to section 552.107, V.T.C.S. article 6252-17a, section 3(a)(7), as it relates to attorney fee bills in Open Records Decision No. 589 (1991). Summarizing a previous open records decision, Open Records Decision No. 574 (1991), we stated:

[Open Records Decision No. 574] concluded that the protection of section 3(a)(7) was limited to information that revealed client confidences to an attorney or that revealed the attorney's legal advice. That opinion noted that, in general, an attorney's "mere documentation of calls made, meetings attended, or memos sent is not protected under section 3(a)(7)." [Open Records Decision No. 574] at 7. Such documentation would be excepted under section 3(a)(7) only if it revealed client confidences or attorney advice.

Based upon our conclusions in Open Records Decision No. 574, Open Records Decision No. 589 determined that, pursuant to the statutory predecessor to section 552.107 of the Government Code, a governmental body may withhold from required public disclosure only those portions of an attorney fee bill that reveal client confidences or attorney advice. Open Records Decision No. 589 at 2 (Summary).

We have reviewed the portions of the attorney fee bills that you believe the district may withhold under section 552.107(a). We do not find that they reveal client confidences or attorney advice. We conclude, therefore, that the district must release them to the requestor.

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

Yours very truly,


Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/LRD/rho

Ref.: ID# 25468

Enclosures: Marked documents

cc: Mr. Joseph Stepp
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(w/o enclosures)