



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1994

Ms. Lisa M. Mount
Willette & James
International Plaza, Suite 460
3505 Boca Chica Boulevard
Brownsville, Texas 78521

OR94-675

Dear Ms. Mount:

On behalf of the Santa Rosa Independent School 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# 26601.

The district received a request for the following information:

1. All documents or other writings constituting or evidencing all itemized statements or invoices reflecting charges billed to Santa Rosa I.S.D. for legal services performed by Mr. Robert Galligan, Attorney at Law, for the period of time between April 1, 1991 to December 31, 1992, inclusive.
2. All documents or other writings constituting or evidencing all itemized statements or invoices reflecting charges being billed to Santa Rosa ISD for legal services performed by Ms. Anita G. Lozano, Attorney at Law, for the period of time between April 1, 1991 to December 31, 1992, inclusive.

The school district seeks to withhold the requested information based on sections 552.103(a) and 552.107(1) of the Government Code. You enclosed billing information for the period described in the request that includes fee bills, checks, invoices, and check records.

As a threshold matter, we must consider whether the requestor is seeking information about charges for legal services performed by an attorney other than the two specifically mentioned in the request, Mr. Galligan or Ms. Lozano. You marked such information as "privileged because not requested in that it pertains to work by another attorney."

The fact that information about the legal services of other attorneys was not requested does not make such information privileged. On the other hand, information that is not requested need not be provided. But here the requestor seeks the "documents or other writings" reflecting charges by the two attorneys. It is not clear that the requestor is not seeking the entire fee bills, complete with all entries, including those for services performed by attorneys other than the ones that were named. We, therefore, suggest that the district ask the requestor to clarify his request. In the meantime, we will address the application of the exceptions you raise to all of the entries on the fee bills at issue.

Section 552.103(a) of the Government Code applies to 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.

Gov't Code § 552.103(a). To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated litigation. Open Records Decision No. 551 (1990). You inform us that the school district is involved in two lawsuits. You say that portions of the billing information relate to these pending suits. Both of these lawsuits involve a former school district employee named Carvajal. You also inform us that the billing information contains information that relates to an appeal pending before the Commissioner of Education involving an employee named Irma Guerra.

We agree that the district may withhold the portions of the fee bills that relate to the Carvajal litigation. We also agree that the district may withhold the portions of the fee bills that relate to the appeal pending before the Commissioner of Education. All contested cases before the commissioner of education are governed by the provisions of the Administrative Procedure Act, chapter 2001 of the Government Code. See 19 T.A.C. § 157.1041(b). A contested case under the Administrative Procedure Act constitutes litigation for purposes of section 552.103(a) of the Government Code. See Open Records Decision No. 588 (1991).

The information on the bills that relates to the litigation is the information in the entries that describes the legal services the law firm provided. Therefore, the district may withhold from disclosure those entries under section 552.103(a) of the Government Code.¹ As for the other information in the bills, such as the number of hours, the amount charged, and the attorney's initials, the district may not withhold such information as you have not explained how this information relates to an issue in the pending appeal or in the pending litigation. Nor may the district withhold the information on the checks, invoices or other records under section 552.103(a).

You have not asserted that the information about the "De La Garza Matter" relates to pending or reasonably anticipated litigation. Thus, the district may not withhold from required public disclosure the fee bill information about the "De La Garza Matter" under section 552.103(a) of the Government Code.

The district also raises section 552.107(1) of the Government Code. This exception states 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 Rules of the State Bar of Texas.

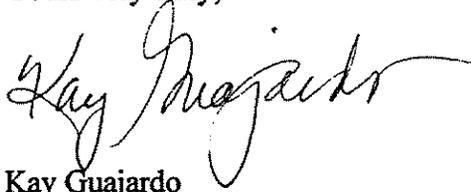
This exception applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990) (copy enclosed). Thus, if a governmental body seeks to withhold attorney fee bills under section 552.107(1), the governmental body must identify the portions of the bills that reveal client confidences or attorney advice. *See* Open Records Decision No. 589 (1991). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See id.* Thus, a governmental body may not withhold fee bills in their entirety under this exception. *See id.* We have marked the portions of the fee bills that reveal the substance of privileged communications and that the school district may withhold from required public disclosure under section 552.107(1).

¹We note that if the opposing parties in the pending litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). *See* Open Records Decision Nos. 349, 320 (1982). In particular, we observe that some of the entries on the fee bills contain information about activities with opposing counsel, such as a conference with opposing counsel. The purpose of section 552.103(a) is not served by withholding this information. 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).

The remaining fee bill information, including the checks and the invoices, do not contain attorney advice and opinion, or client confidences. You, therefore, may not withhold them under section 552.107(1) of the Government Code.

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 contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/RG/rho

Ref.: ID# 26601

Enclosures: Open Records Decision No. 574
Marked documents

cc: Mr. Jose R. Guerrero
Montalvo & Ramirez
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McAllen, Texas 78501
(w/o enclosures)