



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 8, 1995

Mr. Dennie M. Feldman
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Attorneys at Law
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR95-357

Dear Mr. Feldman:

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# 29609.

The East Chambers Consolidated Independent School District (the "district") received a request for, among other things, its "total legal fees for the past two years-copy of invoices stating reasons amount." You assert that the requested information is excepted from required public disclosure based on sections 552.101, 552.103, 552.107(1) and 552.111 of the Government Code.¹

We first consider your section 552.107(1) claim. 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.

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys,

¹We note that Mr. L. M. Marcus, Business Manager of the district, informed Mr. Craig Leavers of this office that the district has released to the requestor copies of fee bills regarding a certain report from the Texas Education Agency.

section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 (1990) at 5, 462 (1987) at 13-14.

Thus, this exception protects only the essence of the confidential relationship between attorney and client from the disclosure requirements of the Open Records Act. Open Records Decision No. 574 (1990) at 5. Consequently, a governmental body may not withhold fee bills in their entirety under this exception, but may only withhold information about the details of the substance of communications between the attorney and the client.

That section 552.107(1) protects only the details of the substance of attorney-client communications means that the exception applies only to information that reveals attorney advice and opinion or client confidences. See Open Records Decision No. 574 (1990). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. See *id.*

We have reviewed the fee bills you enclosed. We note that you did not mark the portions of the bills that are excepted under section 552.107(1). This office has clearly stated that section 552.107(1) does not except fee bills in their entirety and that a governmental body that seeks to withhold fee bills under section 552.107(1) must identify the portions of the bills that reveal client confidences or attorney advice. See Open Records Decision No. 589 (1991) at 1. Nevertheless, we have marked the portions of the bills that the district may withhold from required public disclosure based on section 552.107(1).

You raised section 552.103 of the Government Code. Section 552.103(a) 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.

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. 588 (1991). You have not explained why this exception applies to the requested information. The district may not withhold from disclosure any information based on section 552.103.

Section 552.111 of the Government Code excepts from required public disclosure:

an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.*

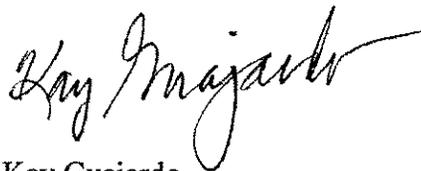
The fee bills at issue are not internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the district. The exception does not apply.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law, including constitutional, statutory or by judicial decision. You do not cite law that would make any information in the fee bills confidential. You do not explain why you assert that "references to specific personnel and advice concerning possible personnel decisions" are exempt from disclosure. However, the bills contain some names that are protected from required public disclosure based on section 552.101 in conjunction with the common-law right to privacy. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). We have marked the bills accordingly.

Finally, we note that the fee bills contain names of individuals that may be students or parents of students. The district must withhold all information that identifies a student or a parent of a student pursuant to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g. *See* Gov't Code § 552.026.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

Ref.: ID# 29609

Enclosures: Marked documents

cc: Ms. Caryle Adams
P.O. Box 319
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(w/o enclosures)