



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 8, 1995

Mr. Ivan J. Mlachak  
Feldman & Associates  
12 Greenway Plaza, Suite 1202  
Houston, Texas 77046

OR95-1194

Dear Mr. Mlachak:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 25785.

The Clear Creek Independent School District (the "school district"), which you represent, has received two requests for information relating to a study conducted on coaches' salaries. Specifically, the requestor seeks "the contents of the entire study on 'coaches salaries' done by Pete [sic] Marwick and Associates" and "any and all itemized billing from the office of David Feldman and Associates, attorney for the CCISD." In addition, the requestor seeks "a summary of the billing for the following items and/or cases: 1. Bill Gray, et al (TSTA grievance)[;] 2. Jerry Roten (TSTA Grievance)[;] 3. Seabrook Int. School Site-based decision making case (TSTA grievance)[;] 4. Angie Chivers case[; and] 5. February, March, April, and May 'itemized billing' as given to the BOT." You have submitted the requested information to us for review and claim that sections 552.101, 552.103(a), 552.107, and 552.111 of the Government Code except it from required public disclosure.

First, we address your assertion that the information is excepted from disclosure as attorney-work product in conjunction with section 552.101 of the Government Code. A claim that information is protected as attorney-work product is more properly raised under section 552.103(a). See Open Records Decision No. 575 (1990). Accordingly, we address next whether section 552.103(a) of the Government Code applies.

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.

For information to be excepted from public disclosure by section 552.103(a), litigation must be pending or reasonably anticipated and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 (1990) at 5. A surmise that litigation will occur is not enough; there must be some concrete evidence pointing to litigation. Attorney General Opinion JM-266 (1984) at 4; Open Records Decision Nos. 518 (1989) at 5, 328 (1982); *see also* Open Records Decision No. 588 (1991) at 7 (holding that a contested case under statutory predecessor to Texas Administrative Procedure Act ("APA"), Government Code chapter 2001, constitutes "litigation" for purposes of section 552.103(a)).

You seek to withhold under section 552.103(a) all of the information requested in items 1 through 4, above, and some of the information requested in item 5. You advise us that the "Jerry Roten and Angie Chivers matters are actual pending lawsuits in state and federal court" and that the "Bill Gray and Seabrook Intermediate matters are grievances presently pending before the Texas Education Administration." You have not demonstrated that the school district is a party to any of this litigation. Moreover, you have not explained how the requested information relates to the litigation. The custodian of records has the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). If a governmental body does not claim an exception or fails to show how it applies to the records, it will ordinarily waive the exception. *See* Attorney General Opinion JM-672 (1987). Because you have not explained how section 552.103(a) applies, the school district may not withhold the requested information as attorney-work product under section 552.103(a).

You also claim that portions of the bills are within section 552.107 of the Government Code. Section 552.107 excepts information if:

(1) it is information that ... 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.

Section 552.107(1) protects information that reveals client confidences to an attorney, including facts and requests for legal advice, or that reveals the attorney's legal advice. *See* Open Records Decision No. 574 (1990). The application of section 552.107(1) to

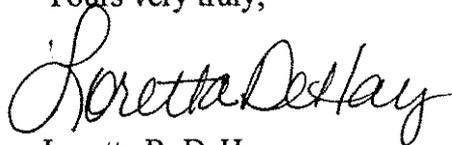
attorney fee bills must be determined on a case-by-case basis. Open Records Decision No. 589 (1991) at 1. Generally, the mere documentation of calls made, meetings attended, or memos sent is not protected by section 552.107(1). Open Records Decision No. 574 at 7. Likewise, a record of a conference with opposing counsel would not be protected by section 552.107(1). *Id.* at 5.

We have examined the information for which you seek section 552.107(1) protection. We conclude that some of it reveals client confidences to an attorney or attorney's legal advice. We have marked the information that the school district may withhold under section 552.107(1). Most of the information, however, is merely documentation of calls made, meetings attended, or memos sent or reviewed, and does not reveal client confidences to an attorney or an attorney's legal advice. This information may not be withheld under section 552.107(1) of the Government Code.

Finally, we address your assertion that section 552.111 of the Government Code excepts some of the requested information from required public disclosure. Section 552.111 excepts an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office concluded that section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. In addition, this office concluded that an agency's policymaking functions do not encompass internal administrative or personnel matters, because disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. The information for which you seek section 552.111 protection relates to an internal administrative and personnel matter, that is, an evaluation of employee salaries. Accordingly, we conclude that section 552.111 does not except this information from required public disclosure. Except for the information that we have marked as excepted under section 552.107(1), the school district must release the requested information in its entirety.

We are resolving this matter with an 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 should 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,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

Enclosures: Marked documents

Ref.: ID# 25785

cc: Ms. Susan Wilcox  
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(w/o enclosures)