



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Mr. L. Eric Friedland
Law Offices of Davidson & Troilo
613 N.W. Loop 410, Suite 1000
San Antonio 78216-5584

OR95-1533

Dear Mr. Friedland:

You have asked this office to determine if 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# 35902.

The City of San Antonio Water System ("SAWS") received a request for a variety of information concerning litigation and legislation involving the Edwards Aquifer. It is our understanding that you have released most of the requested information. However, the requestor also asked for "copies of all attorney billings in conjunction with the litigation styled State of Texas vs. The United States of America" and all billings from your law firm for the period of January 1, 1992, to the date of the request. The requestor states that the litigation to which he refers has concluded. You assert that much of the detailed billing information is related to pending or reasonably anticipated litigation and thus is excepted from disclosure pursuant to section 552.103(a).¹

You have submitted a marked, representative sample of the billing statements to this office for review.² We assume that you seek to withhold only the highlighted portions of the documents. To show the applicability of section 552.103(a),

¹You state that the request for billings from January 1992 to the present is "overbroad and unduly burdensome," but you have submitted to this office billings from your law firm to SAWS for the requested period. We assume that the SAWS billings from January 1992 to the date of the request are responsive to this particular request. You must release to the requestor the billing amounts for the requested period.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office

a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

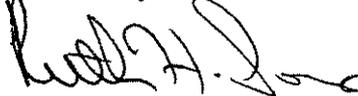
You acknowledge that the litigation to which the requestor refers was dismissed, but explain that there is ongoing litigation regarding the Edwards Aquifer:

That litigation dealt with the State of Texas's position that the Department of Justice erred in denying preclearance to Senate Bill 1477. Subsequently, House Bill 3189 amended Senate Bill 1477 and was precleared by the Department of Justice. The State of Texas case became moot and the appeal was dismissed. Meanwhile, the legislation was challenged in state district court in the case styled Medina County Underground Water District v. Phil Barshop, et al., No. 95-08-13471-CV, 38th Judicial Court, Medina County, Texas.

The information you submitted to this office shows that SAWS has filed a motion to intervene in that lawsuit and that the marked information regarding the prior lawsuit is related to the current litigation in which SAWS seeks to intervene. Since you have shown the marked information is related to reasonably anticipated litigation, the marked information may be withheld from disclosure. Of course, if the SAWS motion to intervene is denied and SAWS does not become a party to the litigation, section 552.103(a) is inapplicable. Also, you must release the remaining portions of the billing statements to the requestor.³

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

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³This would include the total SAWS billing amounts from January 1992 to the date of the request, as sought by the requestor.

Ref.: ID# 35902

Enclosures: Marked documents

cc: Mr. Kirk Patterson
Attorney at Law
19th Floor, Milam Building
115 East Travis Street
San Antonio, Texas 78205
(w/o enclosures)