



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 5, 1997

Mr. Bob Ramirez
Escamilla and Poneck, Inc.
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR97-1028

Dear Mr. Ramirez:

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# 105365.

The Harlandale Independent School District (the "district"), which you represent, received a request for a copy of "the Attorney's Fee Bill's [sic] (work done for the District) during November 1995 thru [sic] January 1996," information which you contend relates to your firm's legal representation of the district regarding a specific dispute. You have submitted for our review a representative sample of the attorney billing statements which you contend should be withheld pursuant to sections 552.103 and 552.107 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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 seek to withhold the requested information in its entirety under section 552.103. Although you claim that the information at issue pertains to pending litigation, you have not demonstrated how the entire or any specific portion of the attorney billing statement relates to the

¹We 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 Nos. 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.

pending litigation. In Open Records Decision No. 222 (1979), this office stated that the litigation exception does not apply where there is no showing of a direct relationship between the information sought and the pending or contemplated litigation. In this regard, we note that you have not argued or otherwise demonstrated that the amounts charged for the legal services or the identity of the individuals performing those tasks "relate" to the legal issues in the litigation; similarly, you have not demonstrated how the description of legal services performed "relate" to the litigation. Consequently, we conclude that the district has not met its burden of demonstrating that the time, dates of services, dollar amount, and descriptions of the services associated with the legal representation of the district are related to the pending litigation. Therefore, the requested information may not be withheld under section 552.103 of the Government Code.

In the alternative, you have argued that the attorney billing statements are protected by the attorney-client privilege.² Therefore, we now address the applicability of the attorney-client privilege to the requested information contained in the billing statements. You claim that the attorney billing statement should be withheld pursuant to section 552.107, because "the requested information contains information that would reveal privileged information and communication between the attorney and his client." Section 552.107(1) excepts information from disclosure if:

[I]t 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 Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. Section 552.107(1) does not protect purely factual information unless the factual information constitutes a confidence that the client related to the attorney. *See id.* at 5. In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See* Open Records Decision No. 589 (1991). We have reviewed the submitted information for which you raised section 552.107(1) as an exception, and conclude the district may withhold part of this information under the attorney-client privilege of section 552.107. We have marked and bracketed the information that may be withheld pursuant to section 552.107(1).

²You also argue that release of the submitted information would be a "breach under the Texas Rules of Civil Procedure." Please note, however, that discovery privileges do not serve as exceptions to disclosure under the Open Records Act. *See* Open Records Decision No. 575 (1990); *see also* Open Records Decision No. 416 (1984).

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 105365

Enclosures: Marked documents

cc: Ms. Diana R. Buenteo
723 Berlin Avenue
San Antonio, Texas 78211
(w/o enclosures)

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