



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 19, 1997

Mr. Roger Beecham
Passman & Jones
2500 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

OR97-1148

Dear Mr. Beecham:

On behalf of the Dallas County Water Control and Improvement District No. 6 (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 requests were assigned ID#s 35044, 34780 and 35023.

The district received three related requests for information to include documents reflecting monies paid for legal and engineering services, documents demonstrating how the district was created and by what authority it acts, and expenditure reports for fiscal years 1993-1994 and 1991-1995.¹ You contend that certain items of the requests "are so broad as to preclude the District from complying." As to those items of the requests that are not overbroad, you have submitted representative samples of the responsive information to this office for review.² You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code, the attorney-client privilege, the work product doctrine, and rules of evidence and civil procedure. We have considered the exceptions you claim and have reviewed the documents at issue.

As to the items of the request that you contend are overbroad, we note that a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990). However, when a governmental body is

¹We note that this office has previously ruled on three other related requests for information: Open Records Letter Nos. 96-0012 (1996), 95-891 (1995), 95-763 (1995).

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 Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

presented with a broad or vague request for information rather than a request for specific records, it should advise the requestor of the types of information available so that he may narrow his request. Open Records Decision No. 563 (1990).

We note also that the submitted documents include the following: the notice of a public meeting, minutes of public meetings, a commissioner's court order, a financial audit report that was adopted at a public meeting, a certificate of convenience and necessity filed with the Public Utilities Commission, and other publicly filed documents. For compelling reasons of public policy, the above-listed documents cannot be withheld from disclosure even if they arguably fall within the scope of one of the exceptions to disclosure found in chapter 552 of the Government Code. Gov't Code §§ 551.022 (minutes and tape recordings of open meetings are public), .041 (notice), .043 (time and accessibility of notice), .045 (emergency addition to agenda). *See also* Open Records Decision No. 551 (1990) at 2-3, 221 (1979) at 1. Therefore, the district must release these documents.

We will now consider whether the remaining documents are protected from disclosure under the exceptions you have claimed. Section 552.103(a) of the Government Code excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body 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 have established that the district anticipates litigation. *See* Open Records Letter Nos. 96-0012 (1996), 95-891 (1995), 95-763 (1995). However, you have not demonstrated how all of the information in the remaining documents relates to the anticipated litigation. Therefore, the district may only withhold portions of these documents from disclosure under section 552.103(a).³ We have marked the documents accordingly.⁴

Next you contend that the remaining documents are excepted from disclosure as work product. This office recently issued Open Records Decision No. 647 (1996), holding that a governmental body may withhold information under sections 552.103 or 552.111 of the Government Code if the governmental body can show (1) that the information was created for civil trial or in anticipation of civil litigation under the test articulated in *National Tank v. Brotherton*, 851 S.W.2d 193 (Tex. 1993), or after a civil lawsuit is filed, and (2) that the work product consists of or tends to reveal an attorney's "mental processes, conclusions, and legal

³We note that if the opposing parties in the anticipated litigation have seen or had access to any of the information at issue, there would be no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

⁴We note that you have submitted multiple copies of some documents. In these instances, we have only marked one copy of each document.

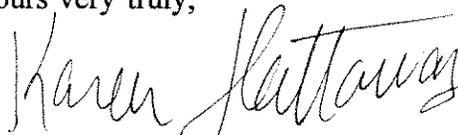
theories.” Open Records Decision No. 647 (1996) at 5. The work product doctrine is applicable to litigation files in criminal as well as civil litigation. *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994) (citing *United States v. Nobles*, 422 U.S. 225, 236 (1975)). We find that the work product doctrine does not protect any information that we have not already marked as excepted from disclosure under section 552.103(a).

You also contend that the remaining documents are excepted from disclosure under rules of evidence and civil procedure. However, chapter 552 of the Government Code differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. Attorney General Opinion JM-1048 (1989); see Open Records Decision No. 575 (1990) (section 552.101 does not encompass discovery privileges); Gov’t Code § 552.006 (chapter 552 does not authorize withholding public information or limit availability of public information to public except as expressly provided by chapter 552).

Finally, you contend that the legal fee bills are excepted from disclosure pursuant to the attorney-client privilege. We have concluded that the district may withhold portions of the fee bills under section 552.103(a). Therefore, we will only apply the attorney-client privilege to those portions of the fee bills that are not marked as protected under section 552.103(a). Section 552.107(1) of the Government Code excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from disclosure only “privileged information,” that is, information that reflects the client’s confidential communications to the attorney and the attorney’s legal advice or opinions. Open Records Decision No. 574 (1990) at 5-7. Section 552.107(1) does not, however, protect purely factual information. *Id.* We conclude that portions of the submitted fee bills are excepted from disclosure under section 552.107(1). We have marked the fee bills accordingly.

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID#s 35044, 34780 and 35023

Enclosures: Marked documents

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