



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1997

Ms. Tana K. Van Hamme
The Ronquillo Law Firm, P.C.
Harwood Center
1999 Bryan Street, Suite 3450
Dallas, Texas 75201

OR97-2803

Dear Ms. Van Hamme:

On behalf of the Dallas Independent School District (the "school district"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111735.

The school district received a request for "[a]ny and all invoices and payment vouchers for the attached list of law firms since September 1, 1996." You state that the school district intends to release the amounts of each invoice. You assert that portions of the requested information are excepted from required public disclosure based on sections 552.103, 552.107(1) and 552.108 of the Government Code. You submitted exhibits "A" and "B" as representative samples of the requested information.¹

You raise section 552.108 for portions of the requested information. Section 552.108 states as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You state:

[In] [s]everal of the lawsuits[,] [the school district] assert[s] claims based on investigations conducted by the Investigations Division of the Safety and Security Department. This is a law enforcement agency

pursuant to Section 37.081 of the Texas Education Code. Some of these investigations may also lead to criminal prosecutions. Release of this information would interfere with the investigation, detection and prosecution of crime.

Section 552.108 applies to records "held by a law enforcement agency or prosecutor." An entity that does not qualify as a law enforcement agency may, under limited circumstances, claim that section 552.108 excepts records in its possession from public disclosure. For example, section 552.108 applies to documentary evidence in a pending police case when such evidence is in the custody of a non-law enforcement agency. *See Open Records Decision No. 272 (1981)*. Likewise, when an investigatory file is open, and there exists a reasonable probability of criminal prosecution, a non-law enforcement agency may claim section 552.108 as to that file. *See Attorney General Opinion MW-575 (1982)*.

Here, we are concerned with fee bills, not an investigative file. Thus, while the school district's Investigations Division of the Safety and Security department may qualify as a law enforcement agency for purposes of section 552.108, we do not believe you have adequately explained how the release of the portions of the bills that pertain to criminal investigations would interfere with law enforcement, detection or prosecution. Moreover, you have not marked any portion of the submitted representative samples as covered by section 552.108. Accordingly, the school district may not withhold the fee bills from disclosure based on section 552.108 of the Government Code.

You assert that portions of exhibit A are excepted from disclosure by section 552.103 of the Government Code. Section 552.103(a) reads as follows:

(a) Information is excepted from [required public disclosure] if it is 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)*. A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation.

In this instance, you have submitted the "Defendant Dallas Independent School District's First Set of Interrogatories and First Requests [sic] for Production of Documents" in the case of *Aude v. Dallas Independent School District*, No. 94-10708-I (162nd Dist. Ct., Dallas County, Tex.). We conclude that the school district may withhold the highlighted information in the section of the fee bills that contains a description of the services rendered in this pending case. However, you have not established that litigation is reasonably anticipated concerning any particular matter or that any other portion of the information relates to pending litigation. We have marked the portions of the information that the school district may withhold from disclosure based on section 552.103.²

You raise section 552.107(1) of the Government Code in regard to exhibit B. Section 552.107(1) 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 Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

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, 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). Consequently, if a governmental body seeks to withhold attorney fee bills under section

²If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now 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 is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

552.107(1), the governmental body must identify the portions of the bills that reveal client confidences or attorney advice. *See* Open Records Decision No. 589 (1991). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See id.* We have marked the portions of the fee bills that the school district may withhold from disclosure based on section 552.107(1) of the Government Code.

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

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 111735

Enclosures: Marked documents

cc: Ms. Kay Vinson
I-Team Producer
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(w/o enclosures)