



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 1, 1998

Ms. JoAnn S. Wright
Walsh, Anderson, Underwood, Schulze
& Aldridge, P.C.
P.O. Box 168046
Irving, Texas 75016-8046

OR98-1573

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116153.

The Keller Independent School District (the "school district"), which you represent, received a request for "[c]opies of all invoices, itemized billing statements, records of payment and related correspondence to and from any and all school attorneys since April 1, 1997. These records are to include but not necessarily be limited to, all legal services concerning Special Education ("IDEA"), the Americans with Disabilities Act ("ADA"), and Section 504 of the federal 1973 Rehabilitation Act, as amended." You claim that the attorney fee bills are excepted from disclosure under sections 552.101, 552.103, 552.107 and 552.114 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from 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.

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). A contested case under the Administrative Procedure Act is litigation for purposes of section 552.103. Open Records Decision No. 588 (1991). Litigation cannot be regarded as "reasonably anticipated" unless we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982).

You have demonstrated that the school district is a party to pending litigation in one case and anticipates litigation in two other cases. *See* 19 T.A.C. §§ 89.1151 *et seq.* Some of the information in the fee bills relates to these cases and is, therefore, protected from disclosure under section 552.103(a). However, you have not explained how the hours, rate and amount of fees relate to litigation so we conclude that you have not met your section 552.103(a) burden with respect to these portions of the fee bills.¹

You asserted sections 552.101 and 552.107 for the attorney client privilege. We note that this exception is properly raised under section 552.107. *See* Open Records Decision No. 574 (1990). We will next address whether the attorney-client privilege applies to the hours, rates, and amounts charged for services. Section 552.107 excepts information from 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.

Gov't Code § 552.107. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 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. *Id.* at 5. Section 552.107(1) does not protect purely factual information. *Id.* We conclude you have not demonstrated how the hours, rates, and amounts of legal expenses incurred by the school district are privileged information. Therefore, you may not withhold the requested information under section 552.107(1).

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

¹We note that if the opposing parties in the litigation have seen or had access to any of the information at issue, there would be no justification for withholding that information 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).

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

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/ch

Ref: ID# 116153

Enclosures: Submitted documents

cc: Mr. Raymond J. Castagnaro
1312 Arboledas Lane
Keller, Texas 76248-5709
(w/o enclosures)