



June 21, 1999

Mr. Stephen Hilmy
Gary, Thomasson, Hall & Marks
P.O. Box 2888
Corpus Christi, Texas 78403-2888

OR99-1688

Dear Mr. Hilmy:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 125320.

The Corpus Christi Independent School District (the "district"), which you represent, received a request for six categories of information concerning the district's payments to and representation by outside legal counsel. Items 1 - 4 of the request seek information concerning a specific lawsuit, while items 5 - 6 do not. You state that you have attempted to clarify the request with the requestor, but have not received a response. Gov't Code §552.222(b). A governmental body must, however, make a good faith effort to relate a request to information held by it. Open Records Decision No. 561 at 8-9 (1990), 87 (1975). Further, an officer for public information is required to promptly produce public information. Gov't Code § 552.221.

You have submitted representative samples for the information sought in request items 1 - 4.¹ You claim that this information is protected from disclosure by sections 552.101 and 552.103.² This ruling, therefore, does not address whether the district must release or withhold information sought by request items 5 - 6.

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). 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.

²Although you claim that section 552.101 excepts some of the information from disclosure pursuant to the attorney-client privilege, the attorney-client privilege is properly claimed under section 552.107. Open Records Decision No. 574 at 2 (1990).

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.

The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *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 at 4 (1990). The district must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that the district is currently involved in pending litigation. *Hurst v. Hankins*, No. 13-99-162-CV (Corpus Christi). You represent that the case is now pending before the court of appeals. You have shown that litigation is pending. It is also evident that most of the submitted information relates to the litigation and may be withheld.³ We do not believe, however, that you may withhold the hours or amounts billed to the district under section 552.103. See Gov't Code § 552.022(3), (16). Similarly, we do not believe that this information is excepted from disclosure by the attorney-client privilege under section 552.107. Open Records Decision No. 589 (1991). You have not explained how or why the hours and amounts billed reveal either confidential communications from the client to the attorney or the attorney's legal advice or opinions. Open Records Decision No. 574 (1990).

Finally, you claim that the information may be withheld to protect the attorney's degree of preparation, strategies, case precedents emphasized, and persons consulted. We presume

³Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

from your arguments that you are raising the attorney work product exception under section 552.111 of the Government Code. This office announced in Open Records Decision No. 647 (1996) that a governmental body must show that the work product (1) was created for trial or in anticipation of litigation under the test articulated in *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993), and (2) consists of or tends to reveal the thought processes of an attorney. *Id.* at 5. The district has not established that the hours and amounts billed consist of or tend to reveal the thought processes of an attorney. Accordingly, the district may not withhold the requested information from disclosure based on section 552.111. We have marked the information that may be withheld. The remaining information must be released.

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.

Sincerely,



Sam Haddad
Assistant Attorney General
Open Records Division

SH\JDB\nc

Ref: ID# 125320

encl. Submitted documents

cc: Ms. Jeanne Chastain
710 Buffalo, Suite 605
Corpus Christi, Texas 78401
(w/o enclosures):