



October 19, 1999

Mr. Richard L. Hamala
Lloyd, Gosselink, Blevins, Rochelle, Baldwin & Townsend, P.C.
111 Congress Avenue, Suite 1800
Austin, Texas 78701

OR99-2955

Dear Mr. Hamala:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128212.

The Aqua Water Supply Corporation (the “corporation”), which you represent, received a request for, among other things, various legal invoices. You claim that portions of the requested invoices are excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code.¹ You have marked in pencil the information you seek to withhold. We have considered the exceptions you claim and reviewed the submitted sample invoices.²

Section 552.103(a), the “litigation exception,” excepts from disclosure information relating to litigation to which the state is or may be a party. The corporation has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is

¹You have not submitted the other requested items for our review. Therefore, we presume that this information has been released to the requestor. *See* Gov’t Code § 552.301.

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.

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 corporation must meet both prongs of this test for information to be excepted under section 552.103(a).

After reviewing the submitted information, we conclude that the corporation has met its burden under section 552.103(a) as to some of the marked entries. However, we cannot determine from the face of the documents, nor have you explained, how the other entries for which the corporation claims an exception under section 552.103 are related to either reasonably anticipated or pending litigation. We have marked the entries that the corporation may withhold under section 552.103(a).³

You also claim that portions of the marked invoices may be withheld under section 552.107. Section 552.107(1) excepts 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 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 at 5 (1990). When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

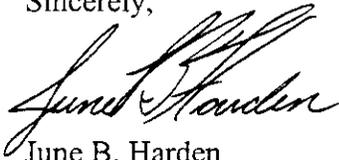
That section 552.107(1) protects only the details of the substance of attorney-client communications means that the exception applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See* Open Records Decision Nos. 589 (1991), 212 (1978) (even though the content of a communication might be confidential, the fact of a communication is ordinarily not excepted from disclosure); *see also* *See* Tex. R. Civ. Evid. 503(a)(5) (a communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional

³We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is 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 been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

legal services); Open Records Decision Nos. 574 at 5 (1990). We have reviewed the invoices and conclude that portions of the marked fee bills appear to be attorney advice or client confidences. We are unable to determine, nor have you explained, how the bracketed information is protected under section 552.107(1) as attorney advice and opinion or client confidences. Consequently, those portions of the marked records that are enclosed within brackets 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 128212

Encl. Marked documents

cc: Mr. David Palmquist
Rt. 7, Box 121J
Elgin, Texas 78621
(w/o enclosures)