



August 24, 2000

Mr. Bill Jones
Cash * Jones L.L.P.
Chase Tower
600 Travis, Suite 6710
Houston, Texas 77002

OR2000-3238

Dear Mr. Jones

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# 138105.

The Park Board Trustees of the City of Galveston (the "board"), which you represent, received a request for "all legal fees and expenses" for the board's suit against the law firm of McLeod, Alexander, Powel and Apffel ("MAPA"), and a second request for "all legal fees and expenses" for the board's suit against Bettah Beach Productions ("Bettah Beach").¹ You state that you have provided a redacted version of all legal invoices to the requestor, but you contend that the redacted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. You have submitted the responsive information for our review. We have considered the exceptions you claim and have reviewed the documents at issue.

You explain that the board has brought a third party claim against MAPA for malpractice in its representation of the board and Bettah Beach in an oil spill litigation. You further explain that although the suit against Bettah Beach has been resolved, the malpractice suit against MAPA remains ongoing. You direct our attention to a 1999 ruling of this office which

¹You explain that the MAPA case is "inextricably intertwined" with the Bettah Beach case and cannot be separated for the purposes of the two requests.

concluded that a portion of the responsive information was excepted from disclosure pursuant to Government Code section 552.103 because litigation was reasonably anticipated. *See* Open Records Letter No. 99-2196 (1999).²

Section 552.022(a)(16) provides that "information that is in a bill for attorney's fees and is not privileged under the attorney-client privilege" is public information and is not excepted from required disclosure. Attorney fee bills may be excepted only if expressly made confidential or if excepted under the attorney-client privilege. Section 552.103 does not render the requested information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.-Dallas 1999, no pet.) (litigation exception discretionary; governmental body may waive section 552.103 exception). Therefore, you may not withhold the information under section 552.103.

Next, we address whether the attorney-client privilege applies to the requested information. Section 552.107(1) 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(1). 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, 7. Section 552.107(1) does not protect purely factual information that does not reveal a client confidence. *Id.* at 7. We agree that some of the information is excepted from disclosure under subsection 552.107(1) as confidential client communications or an attorney's legal advice. We have marked the information that the board may withhold pursuant to this section.

In summary, the board may withhold the information we have marked. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

²We note that the 1999 decision of this office was based on information before us at that time and does not affect the board's burden to otherwise demonstrate the applicability of section 552.103 in this instance.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 138105

Encl. Submitted documents

cc: Mr. Herber Taylor
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(w/o enclosures)