



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 27, 1994

Mr. Christopher T. Wilson
Staff Attorney
Legal Services Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR94-268

Dear Mr. Wilson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.¹). Your request was assigned ID# 23439.

The Texas Natural Resource Conservation Commission (the "commission") received a request for all of the documents pertaining to "Wesley Eugene Ray or Poly-Cycle Industries." You contend that these records may be withheld from the public pursuant to the Open Records Act, section 552.103(a) of the Government Code (former section 3(a)(3), V.T.C.S. article 6252-17a).

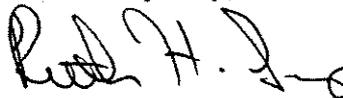
To secure the protection of section 552.103(a) a governmental body must demonstrate that requested information "relates" to pending or reasonably anticipated litigation. Open Records Decision No. 551 (1990) at 4. You provided this office copies of documents showing that the commission is involved in litigation against Wesley Eugene Ray and Poly-Cycle Industries. You also supplied file documents that appear to be related to that litigation. The commission has therefore met its burden of showing that the requested information relates to pending litigation for purposes of section 552.103(a). The requested records may be withheld.

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have 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). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, the commission may choose to release this information. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/sbm

Ref.: ID# 23439, 23451, 24540, 24437, 24474

Enclosures: Submitted documents

cc: Ms. Elizabeth A. Webb
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