



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 14, 1995

Ms. Mary Ruth Holder
Legal Division Director
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR95-1422

Dear Ms. Holder:

You have asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28482.

The Texas Natural Resource Conservation Commission ("TNRCC") received a request for information about a reimbursement application for Avenue Fuel Distributors. You contend that the requested information is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *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 (1990) at 4.

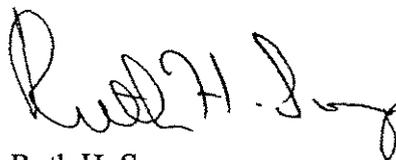
TNRCC has met its burden of showing that litigation is pending by providing documents showing that The Bordeau Group, Ltd. ("Bordeau") has filed suit against TNRCC and the Attorney General for the State of Texas concerning payment of claims for reimbursement. You have submitted to this office for review documents responsive to the request. The submitted documents are related to the litigation. However, 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 No. 349 (1982) at 2. We have marked an application, a letter and a laboratory invoice that all of the parties in the pending litigation

have had access to or seen.¹ Since the parties to the litigation have already had access to or seen these documents there is no justification under section 552.103(a) for now withholding these records from the requestor.

You may withhold the other submitted documents from disclosure under section 552.103(a) to the extent that the opposing party to the litigation has not already seen or had access to those documents. 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) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within TNRCC's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office..

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Ref.: ID# 28482

Enclosures: Submitted and marked documents

cc: Mr. E. C. Kettenbrink, Jr.
Landmark Environmental, Inc.
P.O. Box 517
Eules, Texas 76039
(w/o enclosures)

¹We note that the Office of the Attorney General is representing TNRCC in this suit.

Mr. Tom Bohl
Assistant Attorney General
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(w/o enclosures)

