



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 8, 1996

Ms. LaDonna Castenuela
Staff Attorney
Texas Natural Resource Conservation
Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR96-0488

Dear Ms. Castenuela:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 30748.

The Texas Natural Resource Conservation Commission ("TNRCC") received a request for information relating to spills of oil, hazardous substances, and medical wastes in the San Jacinto River from October 14, 1994 to the time of the request. Most of the documents apparently have already been released to the requestor, but you assert that a memorandum prepared by the General Land Office is excepted from disclosure pursuant to sections 552.103(a) and 552.111 of the Government Code. You have submitted that memorandum to this office for review.

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. You have provided information to this office that indicates litigation is reasonably anticipated. Our review of the memorandum at issue shows that it is related to the anticipated litigation. As you have shown the applicability of section 552.103(a), the memorandum at issue may be withheld from disclosure pursuant to section 552.103(a).¹

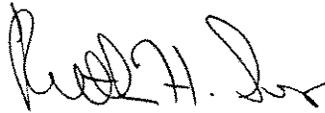
We note that the applicability of section 552.103(a) ends if the other parties to the litigation obtain the information or when the litigation concludes. Attorney General

¹Because the memorandum may be withheld pursuant to section 552.103(a), we need not address your other argument against disclosure.

Opinion MW-575 (1982) at 2; Open Records Decisions Nos. 350 (1982) at 3; 349 (1982) at 2. We note also that the section 552.103(a) exception is discretionary with the governmental entity asserting the exception. Open Records Decision No. 542 (1990) at 4. Thus, TNRCC may choose to release the information. Gov't Code § 552.007.

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.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 30748

Enclosures: Submitted document

cc: Darby M. McLean
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(w/o enclosures)