



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1996

Mr. John A. Riley
Director, Litigation Support Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR96-0663

Dear Mr. Riley:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36331.

The Texas Natural Resource Conservation Commission ("TNRCC") received a request for information compiled or received in connection with an ongoing investigation. You state that the investigation concerns alleged criminal conduct and that a federal grand jury has handed down indictments as a result of the investigation. You assert that the TNRCC Special Investigations Unit has been assisting the U.S. Attorney's Office in the investigation and criminal prosecution. You contend that the information at issue is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code.¹

You assert that documents labeled Attachments B1 through B4 are excepted from disclosure pursuant to section 552.108, which excepts from public disclosure:

¹We 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 No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation or prosecution of crime

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

Section 552.108 may be invoked by the proper custodian of information relating to an ongoing investigation or prosecution of criminal conduct. The exception is applicable even if the custodian is not a law enforcement agency if the investigation leads or may lead to the filing of criminal charges. Open Records Decision No. 474 (1987) at 4-5. The pertinent question is whether release of the information would undermine "a legitimate interest" relating to law enforcement or the investigation or prosecution of crime. Open Records Decision No. 434 (1986) at 2. Based on the information provided this office and our review of the documents at issue, we conclude that Attachments B1 through B4 may be excepted from disclosure pursuant to section 552.108.

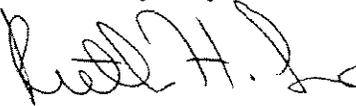
You also assert that documents labeled Attachments B5 and B6 are excepted from disclosure pursuant to section 552.103(a). To show the applicability of section 552.103(a), a governmental body must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related 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 showing that criminal litigation is pending. Our review of the documents labeled Attachments B5 and B6 shows that they are related to the pending litigation.² Thus, these documents may be withheld from disclosure pursuant to section 552.103(a).³

Because the documents at issue may be withheld from disclosure pursuant to sections 552.103(a) and 552.108, we need not at this time address your other arguments against disclosure. 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

²You also submitted to this office several news releases and newspaper articles. As these are public documents that may not be withheld, we assume that these were sent for informational purposes only. See Gov't Code § 552.007.

³We note that the applicability of section 552.103(a) generally ends if the other parties to the litigation obtain the information or when the litigation is concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3; 349 (1982) at 2. However, confidential information may not be disclosed even after the litigation has concluded.

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# 36331

Enclosures: Submitted documents

cc: Mr. Aaron C. Smith