



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 16, 1996

Mr. Geoffrey S. Connor
General Counsel
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR96-1148

Dear Mr. Connor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100592.

The Texas Natural Resource Conservation Commission ("TNRCC") received a request for three categories of documents relating to TNRCC's consideration of Docket No. 94-0685 and Docket No. 95-0432. You claim that TNRCC has made available to the requestor most of the requested information. However, you claim that some of the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. TNRCC has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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 must meet both prongs of this test for information to be excepted under section 552.103(a).

You have submitted to this office two petitions, one filed by the City of Arlington and one filed by TNRCC, both in Travis County District Court, relating to Docket No. 94-0685. Therefore, TNRCC has met the first prong of the section 552.103(a) test for Docket No. 94-0685. Similarly, TNRCC has submitted a copy of the City of

Arlington's Motion for Rehearing relating to Docket No. 95-0432. You state that the filing of a Motion for Rehearing is a procedural prerequisite for filing an appeal of the decision in Docket No. 95-0432. We conclude that TNRCC has established that litigation is reasonably anticipated regarding Docket No. 95-0432. We have reviewed the documents submitted to this office and conclude that they are related to the pending or anticipated litigation. Therefore, TNRCC may withhold the submitted information under section 552.103(a).¹

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,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 100592

Enclosures: Submitted documents

cc: Ms. Grace Casstevens
Casstevens & Casstevens
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(w/o enclosures)

¹As we conclude that TNRCC may withhold these documents under section 552.103(a), we need not now address your claimed exceptions under sections 552.107 and 552.111. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) generally ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).