



Office of the Attorney General

State of Texas

July 29, 1996

DAN MORALES
ATTORNEY GENERAL

Mr. Richard A. Peebles
Attorney at Law
4001 Garth Road, Suite 107
Baytown, Texas 77521-3115

OR96-1330

Dear Mr. Peebles:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40523.

The Goose Creek Consolidated Independent School District (the "district") received a request for the following information:

1. All documented agreements between the district and Exxon Company USA regarding the cleanup of G.W. Carver Elementary School.
2. All documentation on the cumulative cleanup costs and associated tests.
3. Any documents the district has regarding proposals, plans, or prospective courses of action on the future of G.W. Carver Elementary School.

You have submitted to this office a sample of the documents requested, which you assert are excepted from disclosure pursuant to section 552.103(a) of the Government Code.¹

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 Nos. 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.

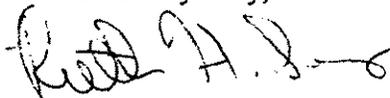
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation in a judicial or quasi-judicial proceeding is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You explained that hydrocarbon materials were found on the playground at G.W. Carver Elementary School in 1995 and that the school is located over a former oil storage pit.

You indicate that the district has been negotiating with Exxon Company USA ("Exxon") to resolve liability and damages concerns. You have submitted to this office several reports generated by Exxon's environmental consultants and also the district's environmental consultants concerning the school site. You state that these reports were part of an exchange of information between the district and Exxon "done in an effort to resolve the issues between the parties over the clean-up and remediation of the contaminated site." You explain that since these issues have not been resolved by agreement, the district and Exxon have requested a contested hearing before the Texas Natural Resource Conservation Commission concerning the damage and liability issues. Our review of the documents at issue indicates that they are related to the anticipated litigation.

Generally, however, when information has been obtained by the opposing party to the anticipated litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. As the documents at issue were prepared by or provided to Exxon, section 552.103(a) is inapplicable to these documents.²

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/ch

²We note that section 552.124 provides that information privileged under the Texas Environmental, Health, and Safety Audit Privilege Act, V.T.C.S. art. 4447cc, is confidential and may not be disclosed. Article 4447cc protects from disclosure certain information produced from environmental audits, which may include implementation plans to correct past noncompliance. *Id.* § 3(a) (defining "audit report" and "environmental or health and safety audits"); 4(b) (describing components of an audit report). You have not indicated that section 552.124 is applicable so we need not address it.

Ref.: ID# 40523

Enclosures: Submitted documents

cc: Mr. Christian Messa
The Baytown Sun
1301 Memorial Drive
Baytown, Texas 77520
(w/o enclosures)