



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 16, 1998

Mr. Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation  
Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR98-0148

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112044.

The Texas Natural Resource Conservation Commission (the "commission") received a request for any documents dated April 1, 1997 to October 21, 1997 relating to the McBay Oil and Gas State Superfund Site. Although you will release some of the information to the requestor, you claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information relates to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991).

The commission is the agency responsible for enforcing the Solid Waste Disposal Act. Health & Safety Code §§ 361.272 (commission may issue administrative order), .273 (commission may bring civil suit for injunctive relief). You inform us that the commission is currently involved in negotiating an agreed administrative order with certain parties in order to settle the case. You assert that “[d]isclosure to the public would likely undermine the settlement of this case that is currently being negotiated with certain parties [and] would likely jeopardize the state’s case in the likely event of litigation.” After reviewing your arguments and the submitted information, we believe that you have shown that the requested information relates to settlement negotiations or reasonably anticipated litigation to which the commission is or may be a party. We, therefore, conclude that the commission may withhold the requested information based on section 552.103 of the Government Code.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because we make a determination under section 552.103, we do not consider your additional 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref.: ID# 112044

Enclosures: Submitted documents

cc: Mr. Clay Rooker  
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(w/o enclosures)