



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 22, 1998

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

OR98-1511

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# 115912.

The Texas Natural Resource Conservation Commission ("the TNRCC") received two separate requests for information concerning the Malone Service Company. You indicate that the TNRCC has provided both requestors with some information that is responsive. However, you assert that other responsive information is excepted from disclosure pursuant to sections 552.103, 552.107, and 552.110 of the Government Code. You submitted representative samples of the records to this office for review, marked to show the exceptions asserted.¹

You also assert that the documents are protected from disclosure pursuant to section 552.110. Section 552.110 provides an exception for "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." As provided by section 552.305 of the Open Records Act, this office provided the company the opportunity to submit reasons as to why the records at issue should be withheld pursuant to section 552.110. However, the company did not submit any

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.

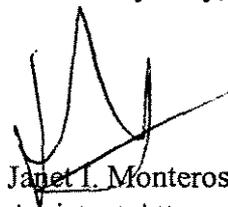
arguments to this office concerning section 552.110. *See* Open Records Decision No. 363 (1983) (third party has duty to establish how and why exception protects particular information). Thus, section 552.110 has not been shown to be applicable and the information contained in Attachment F must be released.

You raise section 552.103 as applicable to the information the requestors seek. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the 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 indicate that after a contested case proceeding, the TNRCC revoked permits issued to the Malone Service Company. The company subsequently appealed the order by filing a petition styled as *Malone Service Co., Inc. v. Texas Natural Resource Conservation Comm'n*, No. 97-08229 (261st Dist. Ct., Travis County, Tex., July 18, 1997). We have reviewed the documents and agree that they are related to pending litigation.

The documents submitted as Attachments C-E may be withheld from disclosure pursuant to section 552.103(a).² However, generally once information has been obtained by all parties to the litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any documents that the opposing party to the anticipated or pending litigation has seen or had access to must be disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision.³ 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 any questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

²The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

³As we address the records under section 552.103, we need not address the other exceptions raised.

JIM/rho

Ref: ID# 115912

Enclosures: Submitted documents

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