



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 29, 1994

Ms. Kerrie Qualtrough  
Staff Attorney  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR94-207

Dear Ms. Qualtrough:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 23593.

The Texas Natural Resource Conservation Commission (the "TNRCC") has received an open records request for information contained in a particular file, including:

a September 21, 1993 letter and any other documents that the TNRCC has received and allowed other people to view and copy since August 6, 1993.

You state that a lawsuit has been filed against the TNRCC and that the documents you have submitted to this office as responsive to the request "are reasonably related to the pending litigation and have not been disclosed to the public or the parties to the litigation." You also state that these documents "should not be disclosed." You assert that the information at issue may be withheld from disclosure pursuant to section 552.103(a) of the Government Code, which excepts information:

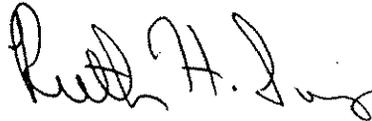
(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party . . . ; and

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

For information to be excepted from disclosure under section 552.103(a), litigation must be pending or reasonably anticipated and the information must relate 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.). We agree that under these circumstances the documents at issue may be withheld. See Open Records Decision No. 349 (1982) at 2 (exception protects governmental entity from compromising its position in litigation). We note, however, that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision No. 350 (1982) at 3.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/rho

Ref.: ID# 23593  
ID# 24677

Enclosures: Submitted documents

cc: Ms. Elizabeth Haney  
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98 San Jacinto Boulevard  
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(w/o enclosures)