



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 26, 1994

Ms. Sally Garcia
Legal Assistant
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR94-502

Dear Ms. Garcia:

The Texas Natural Resource Conservation Commission ("TNRCC") received a request for complaints made about the Anderson County Cedar Creek Water Supply Corporation (the "corporation"). The requestor is the president of the corporation. TNRCC has asked if the requested information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 25702.

TNRCC contends that the information is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show 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 submitted to this office as responsive to the request its file concerning the corporation.¹ TNRCC has provided information that shows litigation is reasonably anticipated. Further, the documents submitted to this office appear to be related to the anticipated litigation. However, TNRCC may not withhold most of the documents.

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 No. 349 (1982) at 2. The opposing party in the anticipated litigation is the corporation. However, it appears that most of the documents in the file were sent to the corporation. When the opposing parties in the anticipated litigation have seen or had access to these documents, there is no justification for withholding the documents

¹We assume that the entire file is responsive to the request.

pursuant to section 552.103(a). TNRCC may therefore not withhold from disclosure the documents that have been seen by the corporation or to which the corporation has had access. We have marked the information that it is obvious the corporation has seen or had access to, but note that all such documents, whether marked or not, must be released. Because TNRCC has demonstrated that litigation is reasonably anticipated and that the documents at issue are related to the litigation, TNRCC may withhold from disclosure the file documents that have not been seen by the corporation and to which the corporation has not had access.

We note that the applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. Also, since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within TNRCC's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

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

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 25702

Enclosures: Marked documents

cc: Mr. Gerald Moore
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(w/o enclosures)

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