



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1994

Ms. Shannon J. Kilgore
Attorney, Enforcement Policy Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR94-632

Dear Ms. Kilgore:

The Texas Natural Resource Conservation Commission ("TNRCC") received a request for documents pertaining to Star Enterprises. TNRCC has asked if this information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 26450.

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 in a judicial or quasi-judicial proceeding 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. This office was provided information that shows litigation is reasonably anticipated, and a "representative sample" of the information at issue for review. That information is related to the anticipated litigation. TNRCC has therefore met its burden of showing that the requested information relates to pending litigation for purposes of section 552.103(a).

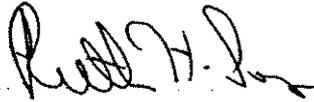
We note, however, that some of the information submitted to this office appears to have already been disclosed to the opposing party in the anticipated litigation. One of the letters at issue was addressed to an attorney who apparently represents Star Enterprises. The correspondence supplied to this office indicates draft documents may have been sent to the opposing party in the anticipated litigation. Absent special circumstances, once all parties to the anticipated litigation have had access to the information at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). The information that has not previously been disclosed may be withheld from disclosure under section 552.103(a).¹

¹In reaching our conclusion here, we 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

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. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the discretion of TNRCC 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/SLG/rho

Ref.: ID# 26450

Enclosures: Submitted documents

cc: Mr. Richard J. Haayen
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(Footnote continued)

Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted.) This open records letter does not reach and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Mr. Brian E. Berwick
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