



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1995

Mr. Rod Johnson
Staff Attorney
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR95-028

Dear Mr. Johnson:

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# 30080.

The Texas Natural Resource Conservation Commission ("TNRCC") has received a request for a certain investigation file. You have submitted some of the requested information to us for review and claim that sections 552.103, 552.107, and 552.111 of the Government Code except it from required public disclosure.

We note that you are responsible for submitting in writing the reasons you believe the requested information is excepted from disclosure. Under the Open Records Act, all information held by governmental bodies is open to the public unless it is within a specific exception to disclosure. Gov't Code § 552.021(a). The custodian of records has the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). If a governmental body does not claim an exception or fails to show how it applies to the records, it will ordinarily waive the exception unless the information is deemed confidential by law. See Attorney General Opinion JM-672 (1987).

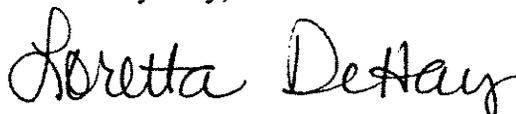
We conclude that you have failed to meet your burden under the Open Records Act and must therefore release the requested information in its entirety. To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated in a judicial 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. Section 552.107(1) excepts only those communications that reveal

client confidences or the attorney's legal opinion or advice. Open Records Decision Nos. 589 (1991) at 1; 574 (1990) at 3; 462 (1987) at 9-11. Section 552.111 excepts from disclosure "only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body at issue." Open Records Decision No. 615 (1993) at 5. Correspondence that is not interagency or intraagency does not fall within the exception. Purely factual material, such as objective statements concerning various events, is not excepted. *Id.* at 6. Because sections 552.107(1) and 552.111 do not ordinarily afford blanket protection, the governmental body asserting those exceptions must clearly mark or otherwise identify the information that it seeks to withhold under those exceptions in a manner that enables this office to evaluate whether the exceptions apply.

Your assertions of sections 552.103, 552.107, and 552.111 are conclusory. For instance, you have provided no information indicating that the requested information relates to litigation to which the TNRCC is a current or reasonably anticipated party. In addition, we are unable to determine who has written various documents or for what purpose. On the whole, your assertions amount to no more than a restatement of the exceptions without an attempt to explain how they apply to the submitted information. We conclude, therefore, that the TNRCC may not withhold the requested information under sections 552.103, 552.107, and 552.111 of the Government Code.

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 may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Ref.: ID# 30080

Enclosures: Submitted documents

cc: Mr. Richard E. Harrison
P.O. Box 340
Sherman, Texas 75091-0340
(w/o enclosures)