



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 30, 1997

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

OR97-2413

Dear Mr. Riley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 110698.

The Texas Natural Resource Conservation Commission (the "commission") received a request for "copies of all documents pertaining to [the requestor's] file and license." You state that you have made some of these documents available to the requestor. You contend that the remaining documents are excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

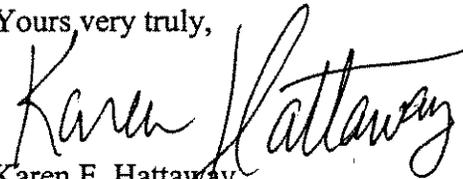
Section 552.103(a) of the Government Code excepts from disclosure information relating to litigation to which the state is or may be a party. The commission has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing 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. The commission must meet both prongs of this test for information to be excepted under section 552.103(a).

You state that there is an enforcement action pending against the requestor which may be resolved through settlement, administrative hearing, or trial. We have reviewed the documents at issue and conclude that they are related to the pending enforcement action. Therefore, the commission may withhold those documents under section 552.103(a). We note, however, that once the opposing party in litigation has seen or had access to these documents, there is no justification for them from disclosure pursuant to section 552.103(a).

Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).¹

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 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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 110698

Enclosures: Submitted documents

cc: Mr. Wade Martinez
CBS Services, Inc.
9312 Louetta Road
Spring, Texas 77379
(w/o enclosures)

¹Because we are able to make a determination under section 552.103, we do not address your additional arguments under section 552.111.