



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 16, 1997

Mr. Kevin McCalla  
Division Director  
Legal Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR97-2752

Dear Mr. McCalla:

You ask whether 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# 111549.

The Texas Natural Resource Conservation Commission (the "commission") received a request for information concerning the last three salary increases for eight commission employees. You state that you have released the information about one employee to the requestor. You claim that the information on the other seven employees is excepted from disclosure under section 552.103(a) of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure 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 or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, 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.

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<sup>1</sup>You state that the information requested here was also the subject of two previous related requests from the requestor. You claim, therefore, that our informal letter ruling dealing with the two previous requests is applicable to the information at issue here. Having reviewed the three requests for information, it is not clear to us that the first two requests encompass all of the information that the third request encompasses. Thus, we find it necessary to address your section 552.103(a) claim for the specific information at issue here.

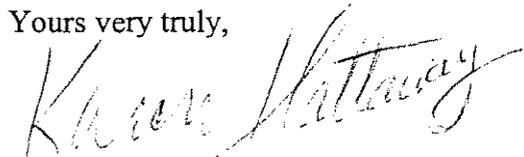
The commission has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related 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 552.103(a).

In this instance, you explain that the commission is currently involved in pending litigation, *Ageze v. Texas Natural Resource Conservation Commission*, No. 4-96A 96CA 127 JN (W.D. Tex. filed Mar. 4, 1996). You have provided this office with a copy of the complaint in that case. We have reviewed the complaint and the information at issue, and we agree with your assertion that the information relates to the pending litigation. The commission may, therefore, withhold the submitted information from disclosure under section 552.103(a). See Open Records Letter No. 97-2006 (1997).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref.: ID# 111549

Enclosures: Submitted documents

cc: Mr. Dewayne Ehman  
6908 Deborah Drive  
Austin, Texas 78752  
(w/o enclosures)