



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 31, 1998

Mr. Richard Lowerre  
Henry, Lowerre, Johnson,  
Hess & Frederick  
202 West 17<sup>th</sup> Street  
Austin, Texas 78701

OR98-0853

Dear Mr. Lowerre:

On behalf of the City of Del Rio (the "city"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114462.

The city received a request for thirteen items of information pertaining to the application of Adobe Eco-Systems ("Adobe") for a permit for a municipal solid waste management facility near Spofford, Texas. You state that, with respect to request items 5, 7 and 10, no documents exist. You state that the city has, or will, release to the requestor all documents responsive to request items 12 and 13. You state that the city will release to the requestor copies of documents the city or any other person has previously released to the public. You assert that the remaining information is excepted from required public release by sections 552.103 and 552.107(1) of the Government Code. You have submitted representative samples of the information the city seeks to withhold from disclosure.<sup>1</sup>

Section 552.103(a) of the Government Code reads as follows:

- (a) Information is excepted from [required public disclosure] if it is information:

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<sup>1</sup>In 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 Nos. 499 (1988), 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.

(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.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991).

You inform us that Adobe's application for a permit is the subject of a contested case hearing subject to the Administrative Procedures Act (the "APA"), chapter 2001 of the Government Code. For purposes of section 552.103, a contested case under the APA constitutes litigation. Open Records Decision No. 588 (1991) at 7 (construing statutory predecessor to APA). You also inform us that the city asked to be named a party in the hearing, but was denied standing to participate as a party to the case. You state that the city intends to appeal that denial to the Commissioners of the Texas Natural Resources and Conservation Commission and, if necessary to district court, if the permit is issued. You state that the city has a right to appeal the denial under the APA.

We conclude that the city has established that it reasonably anticipates being a party in the hearing on the Adobe permit. We further conclude that portions of the submitted information relate to the litigation. Accordingly, the city may withhold the information from required public disclosure based on section 552.103 of the Government Code. We have marked the information.

Section 552.107(1) of the Government Code states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct

Section 552.107(1), as applied by this office, protects only information that reveals attorney advice and opinion or client confidences. See Open Records Decision No. 574 (1990). We believe that in this case, the information subject to section 552.107(1) is protected from disclosure by section 552.103.

We are resolving this matter with this 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/rho

Ref.: ID# 114462

Enclosures: Marked documents

cc: Mr. Derek R. McDonald  
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(w/o enclosures)