



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 6, 1998

Mr. Guy Henry  
Attorney  
Legal-Litigation Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR98-2632

Dear Mr. Henry:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119383.

The Texas Natural Resource Conservation Commission (the "TNRCC") received a request for records pertaining to any actual or suspected sewage spills during 1998 into Brushy Creek, including a July 1998 spill. You indicate that some records have been released to the requestor, but that you believe others are excepted from disclosure on the basis of sections 552.103, 552.107, 552.111. You submitted to this office for review a representative sample of the records at issue.<sup>1</sup>

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.-Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex.App.-Houston [1<sup>st</sup> Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You have shown that litigation is reasonably anticipated. Our review of the documents at issue shows the representative samples you have marked are related to the

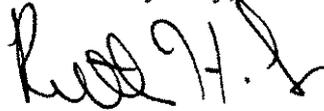
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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

anticipated litigation. Thus, you may withhold the information you have marked as protected under section 552.103(a).<sup>2</sup> We note that 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).<sup>3</sup>

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 questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 119383

Enclosures: Submitted documents

cc: Ms. Diane C. Jacobs  
Ivy, Crews & Elliott  
8140 N. MoPac, Building 2-150  
Austin, Texas 78759-8860  
(w/o enclosures)

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<sup>2</sup>We assume that the information at issue has not been obtained by the other party to the anticipated litigation, as no section 552.103(a) interest generally exists with respect to information that the other party has had access to. Open Records Decision Nos. 349 (1982), 320 (1982).

<sup>3</sup>Because you may withhold the marked information at this time under section 552.103(a), we need not address your other arguments.