



May 10, 1999

Mr. Paul Sarahan, Director
Litigation Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR99-1258

Dear Mr. Sarahan:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123936.

The Texas Natural Resource Conservation Commission (the "TNRCC") received a request for records concerning an administrative complaint, a particular site, and the previous and current owners of the site. You assert that you have released some requested information, however you seek to withhold certain records which you contend are protected by sections 552.103 and 552.111 of the Government Code. 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 Tex. 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, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental entity must meet both prongs of this test for information to be excepted under section 552.103(a).

You have shown that the TNRCC reasonably anticipates litigation and that the records at issue are related to that reasonably anticipated litigation. However, once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Some of the records for which you assert section 552.103 protection have been seen by the opposing party in the anticipated litigation, including records sent to the opposing party. You may withhold the records at issue that the opposing party to the anticipated litigation has not seen or had access to. We need not address your section 552.111 claims because the documents for which you assert section 552.111 are protected from disclosure by section 552.103. The remaining records must be released.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy". The signature is fluid and cursive, with the first name "Ruth" being the most prominent.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 123936

encl. Submitted documents

cc: Mr. Richard Tomlinson
Attorney at Law
One Greenway Plaza, Suite 100
Houston, Texas 77046
(w/o enclosures)