



May 12, 1999

Ms. Susanna K. Holt
Assistant Attorney General
Office Of The Attorney General
Executive Administration
P.O. Box 12548
Austin, Texas 78711-2548

OR99-1286

Dear Ms. Holt:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124983.

The Office of the Attorney General received a request for “[c]opies of all correspondence to and from Michael Gallagher and other contract lawyers involved in the Koch lawsuit regarding your office’s discussions about their fees.” You have submitted representative samples of the requested information.¹ You seek to withhold the requested information under sections 552.103 and 552.111 of the Government Code.

Section 552.103(a) exempts from required public 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

¹In reaching our conclusion, 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) (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.

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 the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. See *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.). You contend that the requested information is related to two pending cases referenced in the request: *United States of America and State of Texas v. Koch Industries, et al.*, United States District Court for the Southern District of Texas, Houston Division, Civil Action No.H 95-1118; and *United States of America and State of Texas v. Koch Industries, et al.*, United States District Court for the Northern District of Oklahoma, Civil Action No. 97CV687B(W).

Having reviewed your arguments and the submitted information, your Exhibits 4 through 7, we conclude that you may withhold the requested information under section 552.103(a).² Since we have resolved this matter under section 552.103(a), we need not address your section 552.111 claim.

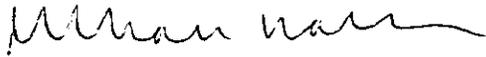
We assume, however, that none of the information in the records at issue has previously been made available to the opposing party in the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the opposing party has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). Similarly, section 552.103(a) does not authorize withholding materials which have already been made available to the public. Open Records Decision No. 436 (1986). 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

²Your Exhibit 8 is a copy of an "Outside Counsel Agreement" of December 6, 1996. It is our understanding that you submitted this document in support of your arguments for withholding Exhibits 4 through 7, and not as information responsive to the request. Therefore, this decision does not address whether Exhibit 8 is subject to disclosure.

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,



William Walker
Assistant Attorney General
Open Records Division

WMW/eaf

Ref.: ID# 124983

encl: Submitted documents

cc: Mr. George Kuempel
Reporter
The Dallas Morning News
1005 Congress Avenue, Suite 930
Austin, Texas 78701
(w/o enclosures)