

CAUSE NO. D-1-GN-19-006941

<p>TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, <i>Plaintiff,</i></p> <p>v.</p> <p>KEN PAXTON, ATTORNEY GENERAL OF TEXAS, <i>Defendant,</i></p> <p>and</p> <p>SIERRA CLUB, <i>Defendant-Intervenor.</i></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>IN THE DISTRICT COURT OF</p> <p>TRAVIS COUNTY, TEXAS</p> <p>53RD JUDICIAL DISTRICT</p>
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**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY'S
 NOTICE OF APPEAL**

Plaintiff, Texas Commission on Environmental Quality, by and through the Attorney General, files this Notice of Appeal in the above and numbered cause and desires to appeal to the Third Court of Appeals from the Order on Cross-Motions for Summary Judgment and Final Judgment signed by District Judge Jan Soifer May 5, 2021. TCEQ is entitled to appeal this Order pursuant to Tex. Civ. Prac. & Rem. § 51.012.

NOTICE TO THE COURT

This is a suit under the Public Information Act. Texas Commission on Environmental Quality hereby notifies the Court that pursuant to Tex. Gov't Code § 552.3221, the information at issue was filed with the court for in camera inspection necessary for the adjudication of the case. Upon receipt of the information at issue for in camera inspection, the court is required to enter an order that prevents release to

or access by any person other than the court, a reviewing court of appeals, or parties permitted to inspect the information pursuant to a protective order. Tex. Gov't Code § 552.3221(b). The information at issue filed with the court for in camera inspection shall be: appended to the order and transmitted by the court to the clerk for filing as "information at issue"; maintained in a sealed envelope or in a manner that precludes disclosure of the information; and transmitted by the clerk to any court of appeal as part of the clerk's record. Information filed with the court under this section shall not be made available by the clerk or any custodian of record for public inspection. Tex. Gov't Code § 552.3221. A copy of this order is attached to this notice.

Notice is further given that pursuant to Rule 76a of the Texas Rules of Civil Procedure and an order of this Court, certain documents were ordered sealed. This Court further extended the duration of the order sealing those documents until the appeal has concluded. A copy of the order is attached to this notice.

Notice is further given that pursuant to section 6.001 of the Texas Civil Practice and Remedies Code, Texas Commission on Environmental Quality is not required to file a bond.

Respectfully submitted,

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Attorney General of Texas

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First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN COWLES
Deputy Attorney General for Civil Litigation

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***Counsel for Texas Commission on
Environmental Quality***

CERTIFICATE OF SERVICE

I hereby certify that on the June 4, 2021, a true and correct copy of the ***Notice of Appeal*** was served via eFileTexas.gov to all counsel of record as listed below:

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Counsels for Intervenor, Sierra Club

/s/ Joshua A. Eames-Cepero
JOSHUA A. EAMES-CEPERO
Assistant Attorney General

CAUSE NO. D-1-GN-19-006941

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,
Plaintiff,

v.

KEN PAXTON, ATTORNEY GENERAL OF TEXAS,
Defendant,

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SIERRA CLUB,
Defendant-Intervenor.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

53RD JUDICIAL DISTRICT

ORDER ON MOTION TO SEAL COURT RECORDS

On December 3, 2020, this Court heard the Joint Motion of Sierra Club and the Texas Commission on Environmental Quality (“TCEQ”), collectively (“Movants”) to Seal Court Records pursuant to TEX. R. CIV. P. 76a. After reviewing the motion, the pleadings on file, and the arguments of counsel, the Court finds that the Motion should be, and is hereby, GRANTED. The Court makes the following findings:

1. Movants posted public notice of the hearing on the Motion in accordance with Rule 76(a)(3) at the place where notices for meetings of county governmental bodies are required to be posted. A verified copy of the notice was filed with the Clerk of this Court and the Clerk of the Supreme Court of Texas.

2. The hearing on this Motion was open to the public and was held more than fourteen days after the Motion was filed and notice posted. No non-party intervened in this matter for the limited purpose of participating in these Rule 76a

proceedings, nor did any member of the public appear at the hearing to oppose the Motion.

3. The Court finds that these specific portions of court records shall be sealed:

- a. Sierra Club's unredacted Motion for Summary Judgment.
- b. TCEQ's unredacted Motion for Summary Judgment.
- c. Sierra Club's unredacted Response to TCEQ's Motion for Summary Judgment.
- d. TCEQ's unredacted Response to Sierra Club's Motion for Summary Judgment.
- e. Sierra Club's unredacted reply in support of its Motion for Summary Judgment
- f. TCEQ's unredacted reply in support of its Motion for Summary Judgment
- g. Any amendments to the pleadings described above

4. The time period for which the sealed portions of court records are to be sealed is from the date that they are filed under seal with the Clerk until thirty days after Final Judgment is rendered in this cause.

5. The Court finds that a specific, serious, and substantial interest clearly outweighs the presumption that court records be open to the general public, because the information to be sealed is subject to an Amended Protective Order that, among other things, prohibits public disclosure of information designated as "Confidential — Attorneys Eyes Only" pending entry of final judgment. The terms of the Amended Protective Order demonstrate a specific, serious, and substantial interest in maintaining the confidentiality of the information at issue in this dispute until the Court has an opportunity to rule on whether the information subject to the Amended

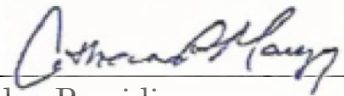
Protective Order may be withheld or must be disclosed under the Texas Public Information Act.

6. The Court further finds that this specific, serious, and substantial interest in maintaining the confidentiality of information subject to the Amended Protective Order clearly outweighs any probable adverse effect that sealing will have upon the general public health or safety. Given the limited scope of the information sought to be sealed and the limited duration of this order, there is no probably adverse effect that sealing will have upon the general public health or safety.

7. The Court further finds that there is no less restrictive means than sealing these records that will adequately and effectively protect the specific interest in maintaining the confidentiality of information subject to the Amended Protective Order. There is no other way for the Movants to fully inform the Court of all of the reasons why the information is or is not confidential, while complying with the terms of the Amended Protective Order. The filing of redacted versions of the pleadings to be sealed also provides the public with as much information as possible without risking a violation of the Amended Protective Order.

8. Finally, pursuant to TEX. R. CIV. P. 166a, the Court finds good cause for the unredacted motions for summary judgment to be filed less than twenty-one days before the hearing on the motion for summary judgment; and good cause for the unredacted responses to be filed less than seven days before the hearing on the motion for summary judgment.

SIGNED this 4th day of December 2020.



Judge Presiding

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 48643078
Status as of 12/4/2020 1:47 PM CST

Associated Case Party: Ken Paxton, Attorney General of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Cole Hutchison		cole.hutchison@oag.texas.gov	12/4/2020 12:24:08 PM	SENT
Jessica Yvarra		jessica.yvarra@oag.texas.gov	12/4/2020 12:24:08 PM	SENT

Case Contacts

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William Christian		wchristian@gdhm.com	12/4/2020 12:24:08 PM	SENT
Ilan M Levin	798328	ilevin@environmentalintegrity.org	12/4/2020 12:24:08 PM	SENT
Joshua A.Eames-Cepero		joshua.eames-cepero@oag.texas.gov	12/4/2020 12:24:08 PM	SENT
Emma Cheuse		echeuse@earthjustice.org	12/4/2020 12:24:08 PM	SENT
Kathleen Riley		kriley@earthjustice.org	12/4/2020 12:24:08 PM	SENT

CAUSE NO. D-1-GN-19-006941

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Plaintiff,

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IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

KEN PAXTON, ATTORNEY GENERAL OF TEXAS,
Defendant,

and

SIERRA CLUB
Defendant-Intervenor.

53RD JUDICIAL DISTRICT

ORDER FILING INFORMATION AT ISSUE WITH THE COURT FOR IN CAMERA INSPECTION

This is an open records lawsuit brought under the Public Information Act (PIA), Tex. Gov't Code ch. 552, and this order is entered pursuant to Tex. Gov't Code § 552.3221. On this 8th day of December 2020, at 4:29 a.m./p.m., the parties filed with the Court for in camera inspection the information at issue, marked as Sierra Club MSJ Exhibit 28.

IT IS ORDERED that the information at issue shall not be released or accessed by any person other than the court, a reviewing court of appeals, or parties permitted to inspect the information pursuant to a protective order.

THE COURT ORDERS the information at issue filed with the court for in camera inspection shall be (1) appended to the order and transmitted by the Court to the clerk as "information at issue," (2) maintained in a sealed envelope or in a manner that precludes disclosure of the information, and (3) transmitted by the clerk to any court of appeal as part of the clerk's records.

IT IS ORDERED that the information at issue shall not be made available by the clerk or any custodian of records for public inspection.

Signed this 8th day of December, 2020.



PRESIDING JUDGE

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Envelope ID: 48931457
Status as of 12/15/2020 3:59 PM CST

Associated Case Party: Ken Paxton, Attorney General of Texas

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
William Christian		wchristian@gdhm.com	12/14/2020 3:38:18 PM	SENT
Ilan M Levin	798328	ilevin@environmentalintegrity.org	12/14/2020 3:38:18 PM	SENT
Joshua A.Eames-Cepero		joshua.eames-cepero@oag.texas.gov	12/14/2020 3:38:18 PM	SENT
Emma Cheuse		echeuse@earthjustice.org	12/14/2020 3:38:18 PM	SENT
Kathleen Riley		kriley@earthjustice.org	12/14/2020 3:38:18 PM	SENT

CAUSE NO. D-1-GN-19-006941

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, *Plaintiff,*

v.

KEN PAXTON, ATTORNEY GENERAL OF TEXAS, *Defendant,*

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SIERRA CLUB, *Defendant-Intervenor.*

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

53RD JUDICIAL DISTRICT

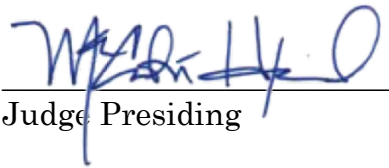
ORDER GRANTING JOINT MOTION TO EXTEND SEALING OF COURT RECORDS

Texas Commission on Environmental Quality (“TCEQ”) and Sierra Club, collectively (“Parties”) move to extend the Order on Motion to Seal Court Records in this case. The Court finds that the Motion should be, and is hereby, GRANTED. The Court makes the following findings:

- 1. On December 3, 2020, the Court entered an Order granting the Parties’ Joint Motion to Seal Court Records until thirty days after Final Judgment is rendered in this cause.
- 2. On May 5, 2021, the Court rendered Final Judgment. TCEQ desires to appeal the Final Judgment.
- 3. Unless extended, the Order will expire during the course of TCEQ’s appeal and unsealing the court records will moot TCEQ’s case and cause irreparable harm from disclosure of the information at issue before final resolution of the case.

Accordingly, it is ORDERED that Order on Motion to Seal Court Records should be, and is hereby, extended until thirty days after termination of this litigation by an order that has become final due to the expiration of the time to appeal, or when all appeals have been exhausted, or by settlement. Should the order or settlement prescribe that all of the information at issue may be withheld by TCEQ, all documents in this case shall remain under seal. Should the order or settlement prescribe that only some of the information at issue may be withheld by TCEQ, the Parties will return to this Court to determine which documents should remain under seal consistent with the order or settlement.

SIGNED this 3rd day of June 2021.



Judge Presiding

AGREED AS TO FORM AND SUBSTANCE:

For TCEQ

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BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN COWLES
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*Counsels for Defendant-Intervenor, Sierra
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Automated Certificate of eService

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Joshua Eames-Cepero	24109826	joshua.eames-cepero@oag.texas.gov	6/4/2021 2:40:37 PM	SENT
Kathleen Riley		kriley@earthjustice.org	6/4/2021 2:40:37 PM	SENT
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