



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1994

Ms. Suzanne E. Giesecke
Assistant General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR94-802

Dear Ms. Giesecke:

The Texas Department of Agriculture (the "department") has received a request for "a copy of the report on [the requestor's] pesticide complaint Case # 02-94-062." The department has asked if this information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 29040.

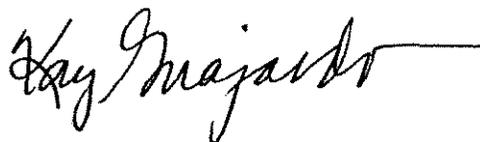
The department contends that the information is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated in a judicial or quasi-judicial proceeding and (2) the information at issue is related to that litigation. *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 (1990) at 4; see also Open Records Decision No. 588 (1991) (concluding that section 552.103(a) applies to contested hearings under the Administrative Procedure Act). In this instance, you have demonstrated that litigation is reasonably anticipated and that the requested information is related to the anticipated litigation. See Attorney General Opinion MW-575 (1982). The department has therefore met its burden of showing that the requested information relates to pending litigation for purposes of section 552.103(a).

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that

information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575; Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/GCK/rho

Ref.: ID# 29040

Enclosures: Submitted documents

cc: Mr. Toby Lum
Route 4, Box 1345
Mount Pleasant, Texas 75455
(w/o enclosures)