



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 6, 1995

Ms. Elaine L. Fannin
Assistant General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR95-1047

Dear Ms. Fannin:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35438.

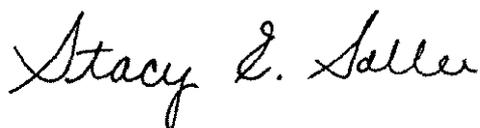
The Texas Department of Agriculture (the "department") received a request for "the report on the investigation [o]f case No. ADAI #02-95-031 and all the information you have pertaining to this case number." You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. You also state that the requested investigative report is not complete.

We note that the document that was submitted to this office for review has been previously disclosed to the complainant. Section 552.007 prohibits selective disclosure of information by a governmental body. Therefore, generally once a document has been released to one member of the public, it "must be made available to any person." Gov't Code § 552.007(b). Once governmental bodies have selectively disclosed information relating to litigation, they are typically precluded from invoking section 552.103 to withhold that information from others. *See, e.g.,* Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, the department may not withhold from disclosure the document submitted to this office for review.

The Open Records Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dism'd); Open Records Decision No. 452 (1986) at 3. As the investigative report did not exist at the time the department received the request, the report is not subject to disclosure under the Open Records Act.

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref.: ID# 35438

Enclosures: Submitted document

cc: Mr. Tim Montz
Route 4, Box 301A
Wichita Falls, Texas 76301
(w/o enclosure)