



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 8, 1995

Mr. David R. Gipson  
Assistant General Counsel  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR95-1202

Dear Mr. Gipson:

You have asked 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# 36352.

The Texas Department of Agriculture (the "department") received a request for information about a pesticide incident investigated by the department. You have submitted to this office for review documents held by the department that are responsive to the request. You contend that the documents at issue are excepted from disclosure under section 552.103(a).<sup>1</sup>

To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation in a judicial or quasi-judicial proceeding is pending or reasonably anticipated 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. You have demonstrated that litigation is reasonably anticipated. Our review of the documents shows that they are related to that anticipated litigation. Therefore, the documents at issue may be withheld from disclosure.

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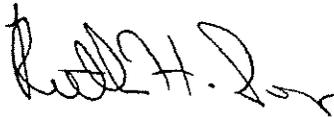
<sup>1</sup>Your markings show that some of the responsive records submitted to this office have already been released to the requestor. We did not review these documents, as we understood them to have been provided for informational purposes only.

In making this determination, we assume that the documents at issue have not been seen by the opposing party to the anticipated litigation. Generally, once information has been obtained by all parties to the anticipated litigation, no section 552.103(a) interest exists with respect to that information. *Open Records Decision No. 349 (1982)* at 2. If the opposing party in the anticipated litigation has already seen some of the records at issue, there would be no justification for now withholding those records from the requestor pursuant to section 552.103(a).

We note that the applicability of section 552.103(a) ends once the litigation has been concluded. *Attorney General Opinion MW-575 (1982)*; *Open Records Decision No. 350 (1982)* at 3. Also, since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the department's discretion to release this information to the requestor. *Gov't Code § 552.007*; *Open Records Decision No. 542 (1990)* at 4.

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 may 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,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/rho

Ref.: ID# 36352

Enclosures: Submitted documents

cc: Ms. Margie Holland  
1302 Pike Lane  
Fredericksburg, Texas 78624  
(w/o enclosures)