



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 15, 1995

Mr. Michael D. Manno
Assistant General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR95-1242

Dear Mr. Manno:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The department's request was assigned ID# 36624.

The Texas Department of Agriculture (the "department") received a request for information about a pesticide application complaint. The requestor asked for the results of the department's investigation, records identifying certain individuals, and information about actions taken by the department as a result of the investigation. You provided the requestor some of the investigation records, but you contend that other responsive information is excepted from disclosure under section 552.103(a).

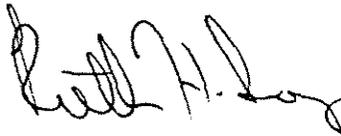
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated in a judicial or quasi-judicial proceeding and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You supplied information showing that litigation is reasonably anticipated by the department. Our review of the information at issue shows that it is related to the anticipated litigation. Thus, the department may withhold from disclosure pursuant to section 552.103(a) the information at issue.

In making this determination, we assume that none of the records at issue have been disclosed to the opposing parties in the anticipated litigation. Absent special circumstances, once all parties to the anticipated litigation have had access to the information at issue, no section 552.103(a) interest exists with respect to that information.

Open Records Decision Nos. 349 (1982), 320 (1982). Also, 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) at 3. We note that 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# 36624

Enclosures: Submitted documents

cc: Mr. Ruben G. Reyes
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(w/o enclosures)