



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 15, 1995

Mr. Douglas L. Huth
Assistant General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR95-1243

Dear Mr. Huth:

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# 36734.

The Texas Department of Agriculture (the "department") received a request for information relating to the department's investigation of a pesticide use complaint. You also submitted to this office for review copies of the records at issue. You contend that these records are excepted from disclosure pursuant to section 552.103(a) of the Government Code.

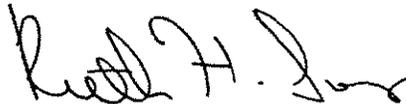
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. For purposes of section 552.103(a), this office considers a contested case under the Administrative Procedure Act, chapter 2001 of the Government Code, to be litigation. Open Records Decision No. 588 (1991) at 7. You provided this office information showing that litigation is reasonably anticipated by the department. Our review of the documents at issue shows that they are related to the anticipated litigation. As you have met the burden of showing that section 552.103(a) is applicable, the records at issue may be withheld from disclosure.

In reaching this conclusion, 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, through discovery or otherwise, 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 seen or had access to the requested records, there would be no justification for now withholding those records from the requestor pursuant to section 552.103(a).

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 these records to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4. Also, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982) (concerning pesticide complaint investigation files); Open Records Decision No. 350 (1982) at 3.

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 Decision

RHS/rho

Ref.: ID# 36734

Enclosures: Submitted documents

cc: Mr. Tony Cantu
Staff Writer
Denton Record-Chronicle
P.O. Box 369
Denton, Texas 76201
(w/o enclosures)