



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 27, 1995

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

OR95-1289

Dear Mr. Huth:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36578.

The Texas Department of Agriculture (the "department") received a request for a copy of the department's investigative report relating to an investigation conducted by Mr. James Whitmire. You state that the complaint that is the subject of the investigation is being reviewed currently by the department to determine if a violation of the Texas Agriculture Code has occurred and if administrative penalties should be assessed. You state that if the department determines that a violation has occurred, then the department fully intends to prosecute the case. You contend that the information requested is excepted from the required public disclosure by section 552.103(a) of the Government Code. We have considered the exception you claimed and have reviewed the documents at issue.

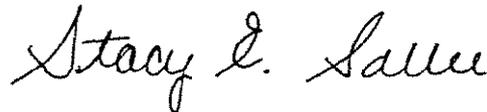
To show that section 552.103(a) is applicable, the department must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); 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. Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

The department is authorized to investigate pesticide-related complaints pursuant to section 76.151 of the Agriculture Code. Additionally, the department may assess penalties for violations of chapter 76 of the Agriculture Code pursuant to section 76.1555. In this instance, the department has supplied this office with information that shows litigation is reasonably anticipated. After reviewing the documents submitted, we conclude that they are related to reasonably anticipated litigation for the purposes of section 552.103(a).

We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, 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).

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/ch

Ref.: ID# 36578

Enclosures: Submitted documents

cc: Mr. Charles R. Hackett, CPCLA  
Regional Claims Representative  
COMAV Managers, Inc.  
P.O. Box 255  
Bells, Texas 75414  
(w/o enclosures)