



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 20, 1996

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

OR96-0214

Dear Mr. Gipson:

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# 38302.

The Texas Department of Agriculture (the "department") received an open records request for records pertaining to an audit or audit report that was performed by the department. You submitted to this office for review a representative sample of the requested audit report and assert that the information is excepted from disclosure under section 552.103 of the Government Code, because the information "relates to reasonably anticipated litigation."

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or *reasonably anticipated litigation* to which the governmental body is a party. *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 Nos. 588 (1991) at 1, 551 (1990) at 4. In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). See Open Records Decision No. 588 (1991) at 7 (information related to contested cases, under Administrative Procedure and Texas Register Act before administrative agency is "information relating to litigation" for purposes of litigation exception).¹ See also Open Records Decision No. 301 (1982) at 2.

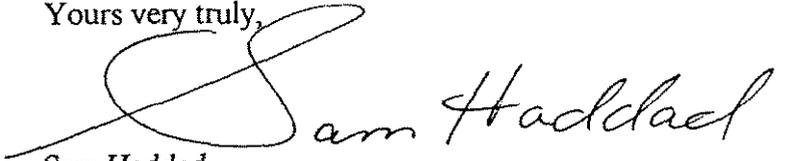
The requested records may therefore be withheld pursuant to section 552.103, but only to the extent that the records have not been previously seen by the opposing parties

¹ The Administrative Procedure and Texas Register Act ("APTRA"), V.T.C.S. art. 6252-13a is the statutory predecessor to the Administrative Procedure Act ("APA"), Government Code chapter 2001.

in the anticipated litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent that the opposing parties have seen or had access to these records, there would be no justification for now withholding those records from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 38302

Enclosures: Submitted documents

cc: Mr. Stephen Cihal
Mallette, Pozzi & Cihal
106 E. Constitution
Victoria, Texas 77901
(w/o enclosures)