



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 6, 1996

Mr. Bill J. Helwig
Assistant General Counsel
The Texas A&M University System
John B. Connally Bldg.
301 Tarrow, 6th Floor
College Station, Texas 77843-1230

OR96-0660

Dear Mr. Helwig:

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# 38822.

The Texas A&M University System received several open records requests for information related to the planned construction of an Animal Science Teaching, Research and Extension Complex ["ASTREC"]. You state that pursuant to one of the requests for "[t]he January 16, 1996, Manure and Waste Water Management Plan for Water and Air Quality Protection for ASTREC," you have provided the requestor with access to the responsive document. However, you contend that the remaining records are excepted from required public disclosure under section 552.103 of the Government Code based on a pending lawsuit in federal court.

Section 552.103(a) excepts from required public disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and,
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a); the requested records may therefore be withheld.

We assume that the opposing party to the 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, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Finally, 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).

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 38822

cc: Ms. Ruth C. Schaffer
10055 Runaway Road
College Station, Texas 77845