



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 29, 1996

Mr. Timothy J. Karczewski  
Assistant General Counsel  
Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR96-1988

Dear Mr. Karczewski:

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# 102046.

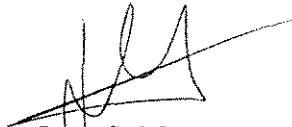
The Department of Agriculture (the "department") received an open records request for "a list of all growers in zone one (1) that you assessed penalties for not having destroyed 1995 cotton stalks to your satisfaction." You state the department has released to the requestor the names of three cotton producers who have signed stipulation and waivers and paid their administrative penalties. You seek to withhold pursuant to section 552.103 of the Government Code the names of the remaining producers who have received Notice of Violation letters, which state the penalties that the department alleges that they owe but have not paid.

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. Open Records Decision No. 588 (1991) at 1. The mere-chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You explain that the cotton producers the department has contacted are required to execute a stipulation and waiver or "the matter will be set for hearing." You have thus demonstrated the "relatedness" of the requested information to reasonably anticipated litigation. We note, however, that absent special circumstances, once information requested under the Open Records Act has been obtained by all parties to the respective litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Because the department has already informed the prospective parties of the possibility of the administrative hearings, the department no longer has a litigation interest in protecting the producers' names under section 552.103. We therefore conclude that the department must release the requested information in its entirety.

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,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/RWP/rho

Ref.: ID# 102046

cc: Mr. Bob Walsdorf  
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Los Fresnoe, Texas 78566