



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 3, 1997

Ms. Susan E. Tennyson
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR97-0002

Dear Ms. Tennyson:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102697.

The Texas Department of Health (the "department") received a request for the preliminary report on the alleged asbestos contaminations of Madison & Lee Senior High Schools in Houston. Additionally, the requestor seeks answers to 27 questions concerning the asbestos contamination. You assert that the requested report is excepted from required public information pursuant to section 552.103(a) of the Government Code. Further, you ask this office to determine whether the department is required to answer the 27 questions submitted by the requestor.

The Open Records Act does not require governmental bodies to answer questions. Open Records Decision No. 555 (1990). Consequently, the department need not prepare answers to the requestor's questions.

You assert that the requested preliminary report concerning the alleged asbestos contamination is excepted from disclosure pursuant to section 552.103. The test for meeting this burden is a showing 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. The department must meet both prongs of this test for information to be excepted under 552.103(a). The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation.

You state that the department's Toxic Substances Control Division is investigating the alleged asbestos contamination and that as a result of that investigation you anticipate the instigation of an administrative action. However, after review of the preliminary report, we do not believe you have shown that litigation is reasonably anticipated in this instance. We conclude, therefore, that the department has not met its burden under section 552.103(a). Accordingly, you may not withhold the requested report from disclosure based on section 552.103.

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,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/SAB/rho

Ref.: ID# 102697

Enclosures: Submitted documents

cc: Mr. Bennie Jenkins
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(w/o enclosures)