



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 8, 1997

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

OR97-1060

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# 105891.

The Texas Department of Agriculture (the "department") received an open records request for a variety of information concerning the requestor's complaint, referenced by incident number 03-96-0034. The department has released to the requestor some information; however, you have submitted to this office for review the remaining requested information which you contend is exempt from disclosure under the Open Records Act. Specifically, you assert that the information may be withheld pursuant to section 552.103 of the Government Code, because the information "relates to reasonably anticipated litigation." We have considered the exception you claim and reviewed the submitted information.

To secure the protection of section 552.103(a), the department must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the department 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. The department is authorized to investigate pesticide related complaints and 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 indicating that an investigation is pending and that, if appropriate, the department will take enforcement action as authorized by statute. *See* Open Records

Decision No. 588 (1991) (litigation includes "contested case" that is before administrative agency). Thus, we conclude that litigation is reasonably anticipated. We further find that the documents that have been submitted are related to reasonably anticipated litigation for the purposes of section 552.103(a).

The requested records may be withheld pursuant to section 552.103 only to the extent that the records have not been previously seen by the opposing parties in the anticipated litigation. Generally, 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). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. We also note that the applicability of this section ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982) (concerning pesticide complaint investigation files); Open Records Decision No. 350 (1982) at 3.

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/rho

Ref.: ID# 105891

Enclosures: Submitted documents

cc: Mr. Royce L. McPhail  
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(w/o enclosures)