



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 17, 1998

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

OR98-3171

Dear Mr. Gipson:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120585.

The Department of Agriculture (the "department") received a request for "the findings and all pertinent information concerning incident # 04-98-0017." The department assigned this request tracking number TDA-OR-99-0005. You assert that some of the requested documents are excepted from disclosure on the basis of section 552.103(a). To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.), *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 at 4 (1990). A contested case under the Administrative Procedure Act ("APA"), Gov't Code ch. 2001<sup>1</sup>, has been determined to be "litigation" within section 552.103(a) of the Government Code. Open Records Decision No. 588 (1991).

We agree that you have shown litigation is reasonably anticipated.<sup>2</sup> Additionally, we have reviewed the documents at issue and agree that they are related to the anticipated

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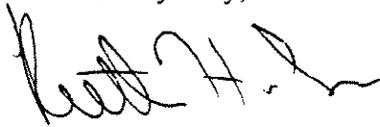
<sup>1</sup>The Administrative Procedure Act, formerly codified as article 6252-13a, V.T.C.S. (1925), was codified as chapter 2001 of the Government Code in a nonsubstantive revision of statutes relating to areas of government that affect both state and local entities. Acts 1993, 73d Leg., ch.268.

<sup>2</sup>Because the records may be withheld under section 552.103, we need not address the other exception raised.

litigation. Thus, you may withhold the records for which you assert the section 552.103(a) exception. In making this determination, we assume that the opposing party in the anticipated litigation has not already seen the report. Once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Also, 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,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 120585

Enclosures: Submitted documents

cc: Ms. Marie Willenberg  
Willenberg & Son Fertilizer, Inc.  
Route 4, Box 199  
Lockhart, Texas 78644  
(w/o enclosures)