



September 30, 1999

Ms. Susan Combs
Commissioner
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR99-2760

Dear Ms. Combs:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128295.

The Department of Agriculture (the "department") received a request for information concerning 1) Incident No. 2424-04-97-0033, 2) complaints filed against Jerry L. Mehevec and/or Williamson County, and 3) Hyvar X-L herbicide. You state that you have released some of the requested information. You contend that the remaining information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the documents at issue.

The documents at issue are two case summaries. You contend that they are excepted from disclosure under section 552.111 as attorney work product. Section 552.111 excepts from disclosure attorney work product that was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for

such litigation. ORD 647 at 4. The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories. *Id.* Having carefully considered your arguments, we conclude that you have met the work product test for both case summaries. Therefore, the department may withhold these documents from disclosure under section 552.111.

Because we are able to resolve this matter under section 552.111, we do not address the other exceptions you raised. 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.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 128295

Encl. Submitted documents

cc: Mr. Doran G. Williams
Attorney at Law
P.O. Box 427
Elgin, Texas 78621
(w/o enclosures)