



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 13, 1996

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

OR96-0179

Dear Mr. Gipson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38260.

The Texas Department of Agriculture (the "department") received a request for a copy of the department's investigative report relating to a complaint involving Double "L" Flying Service. You state that the complaint that is the subject of the investigation is being reviewed currently by the department to determine if a violation of the Texas Agriculture Code has occurred and if administrative penalties should be assessed. You state that if the department determines that a violation has occurred, then the department fully intends to prosecute the case. You contend that the information requested is excepted from the required public disclosure by section 552.103(a) of the Government Code. We have considered the exception you claimed and have reviewed the documents at issue.

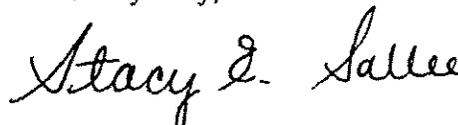
To show that section 552.103(a) is applicable, the department must demonstrate that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. For purposes of section 552.103(a), this office considers a contested case under the Administrative Procedure Act, chapter 2001 of the Government Code, to be litigation. Open Records Decision No. 588 (1991) at 7. Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

The department is authorized to investigate pesticide-related complaints pursuant to section 76.151 of the Agriculture Code. Additionally, the department 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 that shows litigation is reasonably anticipated. After reviewing the documents submitted, we conclude that they are related to reasonably anticipated litigation for the purposes of section 552.103(a).

We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) generally ends once the litigation has been 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,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref: ID# 38260

Enclosures: Submitted documents

cc: Mr. Rick Federwisch  
Senior Claims Representative  
Texas Farm Bureau Insurance Companies  
P.O. Box 2689  
Waco, Texas 76702-2689  
(w/o enclosures)