



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 24, 1996

Mr. Rick Perry
Commissioner
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR96-0604

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39928.

The Texas Department of Agriculture (the "department") received a request for a copy of information concerning Complaint Number 01-96-0020. You assert that the requested information is excepted from required public disclosure based on section 552.103 of the Government Code.

Section 552.103(a) applies to information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

We note that if the opposing party in the anticipated litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). We have marked the documents that the opposing party in the potential litigation has apparently had access to. In addition, the applicability of section 552.103(a) 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 this 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 may 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/rho

Ref.: ID# 39928

Enclosures: Marked documents

cc: Mr. Johnny Roberts
Safety Manager
Azteca Milling Company
P.O. Box 620
Plainview, Texas 79073-0620
(w/o enclosures)