



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 30, 1996

Ms. Susan E. Tennyson  
Supervising Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

OR96-0639

Dear Ms. Tennyson:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39710.

The Texas Department of Health (the "department") received a request for complaints about the Lindale Independent School District (the "district"). You indicate that the department is investigating the complaints, which include concerns about hazardous waste storage. You assert that the complaints may be withheld from disclosure pursuant to section 552.103(a) of the Government Code.

To show that section 552.103(a) is applicable, a governmental body must show 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. You state that the department's Occupational Health Division is investigating the complaints and that civil or administrative action is anticipated as a result of that investigation. *See* 25 T.A.C. § 295.1 *et seq.* (concerning occupational health guidelines and enforcement actions). For purposes of section 552.103(a), this office considers a contested case under the Administrative Procedures Act (the "APA"), Government Code chapter 2001 to constitute litigation. Open Records Decision No. 588 (1991) at 7 (construing statutory predecessor to APA). The department's rules provide for contested hearings under the APA when administrative penalties are assessed. *See* 25 T.A.C. § 1.21, 1.33.

You have shown that litigation is reasonably anticipated. Our review of the complaints at issue shows that they are related to the anticipated litigation. Because you

have made the requisite showing that litigation is reasonably anticipated and that the requested complaints relate to the anticipated litigation, you may withhold the complaints from disclosure. We note, however, that the applicability of section 552.103(a) ends if the other party to the anticipated litigation obtains the information or when the anticipated litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2.

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# 39710

Enclosures: Submitted documents

cc: Mr. Jim Bernard  
Executive Director of Operations  
Lindale Independent School District  
P.O. Box 370  
Lindale, Texas 75771  
(w/o enclosures)