



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 16, 1996

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

OR96-0726

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# 38958.

The Texas Department of Agriculture (the "department") received a request for a copy of the investigative report in Incident No. 01-94-0031. You state that the case is closed and no further litigation can be expected by the department. However, you contend that a memorandum from Senior Inspector Bill Rogers to Assistant General Counsel Elaine Fannin may be excepted from required public disclosure under sections 552.101 and 552.107 of the Government Code as attorney work product.¹

The issues raised by your file, ID# 38958, are the subject of pending litigation between the Harris County District Attorney and the Office of the Attorney General, now on appeal to the Texas Supreme Court. *See Holmes v. Morales*, 906 S.W.2d 570 (Tex. App.--Austin 1995, writ granted). However, pursuant to section 552.306 of the Government Code, the attorney general is required to issue a written opinion within sixty working days from the date the attorney general receives a request for an open records decision.² As the Supreme Court's ruling will be controlling in this matter, we must

¹As the memorandum is the only document you contend is excepted from required public disclosure, we assume you have released the remaining information in the investigative report to the requestor.

²The attorney general's deadlines to issue a written opinion apply only to requests for decisions received by this office on or after January 1, 1996. Act of May 29, 1995, 74th Leg., R.S., ch. 1035,

conclude that you may withhold the requested information until the Court issues a decision. Once the Court rules, should the requestor still desire access/copies of the requested information, you must disseminate the information in accordance with the Court's decision or request another ruling from this office.

If you have questions about this ruling, please contact our office.

Yours very truly,



Sandra L. Coaxum, CPA
Chief, Open Records Division

SLC/LBC/rho

Ref: ID# 38958

Enclosure: Submitted document

cc: Mr. Wade Crist
Golden Spread Spraying
P.O. Box 69
Dawn, Texas 79025
(w/o enclosure)

§ 26(c), 1995 Tex. Sess. Law Serv. 5127, 5142. As you are aware, this office has an additional request from the department concerning attorney work product that was received prior to January 1, 1996. This file was set up as a pending open records decision, ORQ-4, considering the attorney work product issue. This file will be held until the Supreme Court reaches a decision in this matter, at which time we will determine whether a formal opinion construing the Supreme Court's decision is warranted.