



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 12, 1996

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

OR96-0926

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# 40032.

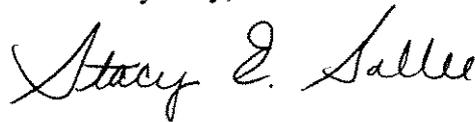
The Texas Department of Agriculture (the "department") received a request for a copy of the department's investigatory file with respect to incident number 02-95-0027. You state that the complaint that is the subject of the investigation is currently scheduled as a contested case before the State Office of Administrative Hearings. You state that the department has released some of the requested information to the requestor. However, you contend that the remainder of the requested information 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. You state that the case is pending before the State Office of Administrative Hearings and have provided an order that shows that the hearing was set for April 24, 1996. We therefore conclude that litigation is pending. After reviewing the documents submitted, we conclude that they are related to this pending 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# 40032

Enclosures: Submitted documents

cc: Ms. Luciana Amaro, CLA  
P.O. Box 2956  
Dallas, Texas 75221  
(w/o enclosures)