



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1996

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

OR96-1046

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# 40724.

The Texas Department of Agriculture received an open records request for certain records that you contend may be withheld from the public pursuant to section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. 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 at this time.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). 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). We also note that 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 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,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/RWP/rho

Ref.: ID# 40724

Enclosures: Submitted documents

cc: Mr. Anthony Lindsay
2634 Village Circle
Katy, Texas 77493
(w/o enclosures)