



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 3, 1997

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

OR97-0700

Dear Mr. Gipson:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 104842.

The Texas Department of Agriculture ("the department") received a request for information concerning an alleged exposure to methyl parathion. You state that the department has released all but certain information that you assert is excepted from disclosure pursuant to section 552.103(a) of the Government Code. We note initially that it is our understanding that you have also withheld from disclosure information made confidential under the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. This statute protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). We agree that medical records may not be disclosed except as provided under the MPA. Open Records Decision No. 598 (1991). However, as you did not submit medical records to this office and assert only section 552.103(a) as an exception for the records at issue, this letter addresses the applicability of section 552.103(a) only.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the 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. The governmental entity must meet both prongs of this test for information to be excepted under section 552.103(a). You have provided this office information showing that litigation is pending. Our review of the submitted records shows that they are related to the pending litigation. Thus, you may withhold the records submitted to this office for review.

However, once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). You may withhold the records at issue that the opposing party to the anticipated litigation has not seen or had access to.<sup>1</sup> The applicability of section 552.103(a) also ends once the litigation has 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 104842

Enclosures: Submitted documents

cc: Ms. Tricia Whisnant  
Legal Assistant  
Payne & Blanchard  
Plaza of the Americas  
700 North Pearl Street  
Suite 500, LB 393, North Tower  
Dallas, Texas 75201-7424  
(w/o enclosures)

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<sup>1</sup>We note that one of the documents submitted to this office is a draft of a final document that the opposing party to the litigation has apparently already seen in final form. We note that unless the opposing party has seen the draft, the document in its draft form may be withheld from disclosure.