



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 26, 1997

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

OR97-2178

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# 109686.

The Texas Department of Agriculture (the "department") received a request for "all information pertaining to incident report #04-97-0014 for Tri-State Chemicals, Inc. in San Angelo, Texas." You contend that these requested documents are excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code.

You assert that the submitted documents are excepted from disclosure under sections 552.103 and 552.111 as attorney work product. A governmental body may withhold attorney work product from disclosure if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. Open Records Decision No. 647 (1996) at 4. The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories.

If a requestor seeks an attorney's entire litigation file, and a governmental body seeks to withhold the entire file and demonstrates that the file was created in anticipation of litigation, we will presume that the entire file is excepted from disclosure under the attorney work product aspect of

sections 552.103 and 552.111. Open Records Decision No. 647 (1996) at 5 (organization of attorney's litigation file necessarily reflects attorney's thought processes) (citing *National Union Fire Insurance Co. v Valdez*, 863 S.W.2d 458, 461 (Tex. 1993)). You note that the present request encompasses the department's entire litigation file. Furthermore, you have satisfied the first prong of the work product test by demonstrating that the file was created in anticipation of litigation. Therefore, we conclude that the department may withhold the file from disclosure under sections 552.103 and 552.111 of the Government Code.¹

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 109686

Enclosures: Submitted documents

cc: Mr. Alex S. Mims
Environmental & Regulatory Services
Tri-State Chemicals, Inc.
1616 S. Kentucky Ste. 400-C
Amarillo, Texas 79102
(w/o enclosures)

¹Because we are able to resolve this matter under sections 552.103 and 552.111, we need not address your other arguments against disclosure.