



Office of the Attorney General
State of Texas

January 7, 1998

DAN MORALES
ATTORNEY GENERAL

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

OR98-0054

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# 111699.

The Texas Department of Agriculture (the "department") received a request for information pertaining to incident number # 2424-03-97-0041. The department has assigned this request for information a tracking number, TDA-OR-97-0056. You claim that the requested information is excepted from required public disclosure under section 552.103(a) of the Government Code. You submitted the documents at issue to this office for review. We note that you indicate documents that were already provided to the requestor are not at issue.

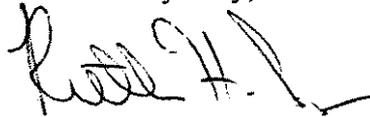
To show that section 552.103(a) is applicable, the department must demonstrate that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Contested cases conducted under the Administrative Procedure Act, chapter 2001 of the Government Code, are considered litigation under section 552.103. Open Records Decision No. 588 (1991) at 7. The department is authorized to investigate pesticide-related complaints and may assess penalties for violations of chapters 75 and 76 of the Agriculture Code. Agric. Code §§ 12.020, 76.1555(a). Proceedings conducted after assessment of a department penalty are subject to the Administrative Procedure Act. *Id.* at § 76.1555(h).

You assert that the information at issue was collected and prepared "for the purpose of proving violations of state or federal pesticide laws in an administrative, civil, or criminal hearing or trial." The department has provided information to this office to show that litigation is reasonably anticipated. Also, we have reviewed the documents submitted and conclude that they are related to the anticipated litigation. Thus, section 552.103(a) is applicable to the documents at issue.

We note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Also, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. You indicate that the documents at issue do not include any information already provided to the potential opposing party.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 111699

Enclosures: Submitted documents

cc: Ms. Dorothy Ford
1809 Meadowlark
Deer Park, Texas 77536
(w/o enclosures)