



January 11, 2000

Commissioner Susan Combs
Texas Department of Agriculture
Post Office Box 12847
Austin, Texas 78711

OR2000-0107

Dear Commissioner Combs:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 131180.

The Texas Department of Agriculture (the “department”) received a written request for “all of the letters and records of any kind that have been made as a result of any of my complaints or problems regarding lawn spraying.” You state that some of the requested records will be released to the requestor. You seek to withhold certain other records pursuant to, *inter alia*, sections 552.103 and 552.107(1) of the Government Code.¹

You first contend that Exhibit B, investigation notes created by a department inspector, are excepted from required public disclosure pursuant to section 552.103 of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.–Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). You state that the investigator’s notes relate “to an ongoing department investigation into possible violations of state or federal pesticide laws for which litigation, in the form of a contested case, can be anticipated.” You further inform us that it would be the department that would prosecute such an administrative action. Based on your representations, we conclude that you have established that the contents of Exhibit B relate to reasonably anticipated litigation to which the department may be a party. The department may withhold Exhibit B pursuant to section 552.103.

¹Because we resolve your request under sections 552.103 and 552.107(1), we need not address your claims under section 552.111 of the Government Code.

You next contend that Exhibit C, e-mail communications between department attorneys, is protected by the attorney-client privilege, as incorporated into section 552.107(1) of the Government Code. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and client confidences. *See* Open Records Decision No. 574 (1990); *see also* Open Records Decision No. 589 (1991). After reviewing Exhibit C, we agree that the attorney's communications contained therein consist of the attorney's legal opinions and advice, and as such are protected by the attorney-client privilege. Consequently, Exhibit C may be withheld in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

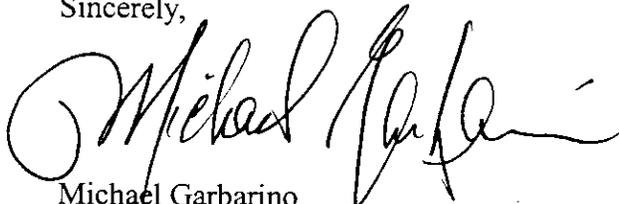
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/RWP/jc

Ref.: ID# 131180

cc: Ms. Susan Jannarone
3604 Winewood Place
Colleyville, Texas 76034
(w/o enclosures)