



# The Attorney General of Texas

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Honorable Elos Soderberg  
General Manager  
Lower Colorado River Authority  
P. O. Box 220  
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Open Records Decision No. 292

Re: Whether contract held by the LCRA under an agreement to maintain confidentiality is excepted from public disclosure under the Open Records Act

Dear Mr. Soderberg:

You have received a formal request under the Open Records Act, article 6252-17a, V.T.C.S., for a copy of a certain contract in your possession. This contract is between the Texland Electric Cooperative and the Shell Oil Company. You ask whether it must be released.

Because our answer turns upon the particular facts set out in various materials submitted to this office, we will recite those facts in some detail. Prior to obtaining a copy of the contract in question, the Lower Colorado River Authority (hereinafter "LCRA") engaged in extended negotiations with Texland concerning its proposed lignite-fired electric generating plant. In order to determine the viability of such a plant, LCRA sought, among other things, to examine its source of fuel. Upon ascertaining that Texland had entered into a contract with Shell Oil Company for the supply of lignite, LCRA requested a copy of that contract so that it could review the information contained therein. Initially, Shell objected to the release of this contract; after extensive negotiations, however, Shell and Texland agreed, subject to LCRA's express promise to maintain the confidentiality of the contract, to let LCRA review it to determine the economic feasibility of the Texland plant and to decide whether to join in the project. As of the date of your request letter, LCRA had not completed its evaluation and therefore had not entered into any contractual arrangement with either Texland or Shell. We understand that this state of facts has not since changed.

In a brief submitted to this office, counsel for Shell makes the following points:

1. The contract and its exhibits contain very sensitive information such as the price of

lignite, the pricing structure utilized by Shell, price escalation mechanisms, data concerning the quantity and quality of reserves, information pertaining to the quantity and quality of deliveries to be made under the contract and technical matters involving mine operations.

2. Shell does not customarily reveal its sales contracts or their contents and, without exception, includes a confidentiality provision in them.

3. Shell was not obligated to furnish the contract to LCRA and would not have done so without assurances that it would be held in confidence.

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5. The gulf coast lignite market is just opening up. The contract is the first one of its kind in the state of Texas. To make it available to the public under [the Open Records Act] would severely damage Shell's competitive position in the gulf coast lignite market place.

A copy of the confidentiality agreement between LCRA and Shell was also submitted.

We believe Open Records Decision No. 256 (1980) is dispositive of this matter. That decision involved a job market survey undertaken by the city of Dallas to determine whether the salaries it paid to photographers and darkroom technicians were comparable to salaries in private industry. Part of the materials in question were longhand notes reflecting wage rate information acquired from the employers who were contacted.

Open Records Decision No. 256 concluded that this information was excepted from disclosure under section 3(a)(10) of the Open Records Act, as:

trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or by judicial decision.

The decision relied primarily upon National Parks and Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974), a leading case involving the Federal Freedom of Information Act which

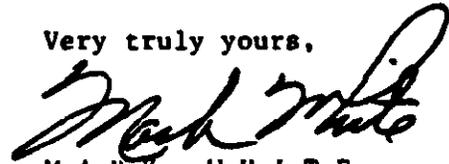
established the following standard for determining the confidentiality of commercial and financial information:

[C]ommercial or financial matter is 'confidential' for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.

Id. at 770. In support of its contention that the longhand notes could be withheld, the city argued that no city ordinance required private employers to cooperate with city officials in a job market survey, that each employer was assured that the confidentiality of his answers would be maintained, and that the city could not conduct complete job market surveys in the future if companies knew that salary data was disclosable. Open Records Decision No. 256 concluded that inasmuch as the release of information reflecting wage rates paid by individual employers was likely to impair the city's ability to obtain essential information in the future, the longhand notes reflecting this information could be withheld.

We believe the reasoning of Open Records Decision No. 256 and the National Parks case is applicable in this instance. There can be no question that LCRA must be able to acquire this type of information in order properly to perform its duties in serving the public. It is also abundantly clear that, but for the confidentiality agreement, LCRA would never have acquired a copy of this contract for review. Our examination of the copy of the contract that you submitted and our assessment of the particular facts here involved convince us that both of the standards set forth in the National Parks case have been met in this instance. We therefore conclude that you need not release the copy of the contract in your possession.

Very truly yours,



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