



The Attorney General of Texas

April 13, 1982

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Open Records Decision No. 311

Re: Availability under the
Open Records Act of informa-
tion held by Texas Municipal
Power Agency concerning
proposed power transmission
line

Dear Mr. Witcher:

On behalf of the Texas Municipal Power Agency you have requested our decision as to whether certain information in the agency's possession is subject to public disclosure under the Open Records Act, article 6252-17a, V.T.C.S. The pertinent facts, as set out in your letters to this office, are as follows.

The agency is seeking to acquire an electric transmission line easement across some land owned by a certain individual. This individual, through his attorney, submitted a request to the agency for information relating "in any way" to the proposed power transmission line. In response to this request, the agency offered to make available some general information. The agency desires, however, to withhold the information contained in four spiral bound documents which were submitted to this office. These bound documents bear the following titles: "Engineering Feasibility Study: Identification of Future Capacity Requirements and Alternative Generating Sources"; "Engineering Feasibility Study: Identification of Future Capacity Requirements and Alternative Generating Sources -- Supplemental Executive Summary"; "Summary of Engineering Feasibility Study"; and "Transmission Line Route Analysis for Denton Area Transmission Lines."

In support of your contention that the material in these four documents may be withheld from disclosure, you cite sections 3(a)(3) and 3(a)(11) of the Open Records Act. Section 3(a)(3) excepts:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or a political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as

a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(11) excepts:

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency.

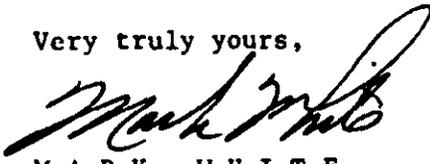
In connection with your section 3(a)(3) claim, you advise that the general information requested by the landowner relates to the route selection process. You express the opinion that this material would not have been requested unless the landowner is contemplating finding some way to have the easement rerouted or to contest any action for condemnation that may be initiated. You further advise that the agency is currently acquiring many miles of transmission easements, which action will likely result in various condemnation suits and related litigation.

This office has observed on several occasions that the mere chance of litigation is not sufficient to trigger section 3(a)(3). Open Records Decision Nos. 288 (1981); 183 (1978); 139 (1976). The exception is applicable, however, where "litigation is pending or reasonably anticipated in regard to a specific matter as opposed to a remote possibility among a group or classification." Open Records Decision No. 139 (1976). (Emphasis added).

You advise that no litigation is presently pending. We understand, however, that the agency has determined the location of the particular easement it needs, which will involve a specific tract of land, and that although the agency is still seeking to acquire the easement through good faith negotiations, it will resort to condemnation proceedings, if necessary, in order to acquire the easement. Because a condemnation proceeding will be initiated if the negotiations are not fruitful, we agree with your determination that litigation is, at the present time, "reasonably anticipated in regard to a specific matter," and, therefore, that section 3(a)(3) is applicable. We are also of the opinion that the information contained in the four documents would be "related" to ensuing litigation within the meaning of section 3(a)(3).

Because we conclude that you may at this particular time withhold the information in question under section 3(a)(3), we need not consider whether it may be withheld under any other provision of the Open Records Act.

Very truly yours,



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