



The Attorney General of Texas

December 31, 1982

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Mr. W. O. Shultz
Associate General Counsel
The University of Texas System
201 West 7th Street
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Open Records Decision No. 357

Re: Availability under the
Open Records Act of informa-
tion concerning land acquisi-
tion by University of Texas
at Arlington

Dear Mr. Shultz:

The owner of a 4.041 acre tract of land located within the authorized land acquisition boundaries of the University of Texas at Arlington has asked you to provide her with certain information pertaining to this land. You have asked us to decide whether the Open Records Act, article 6252-17a, V.T.C.S., requires you to grant her request. You contend only that the requested information falls within section 3(a)(5) of the act, which excepts from required public disclosure:

information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor.

The university is still negotiating for the purchase of this land.

The owner has requested the following:

1. All reports, proposals, audits, evaluations, and investigations made of, for, or by the University of Texas, or any division thereof, concerning the inclusion of my land within the authorized land acquisition boundary line of the University of Texas at Arlington.

2. Any documents reflecting the names of every official of the University of Texas, or any division thereof, who participated in the decision

to include my land within the authorized land acquisition boundary line and the final record of voting by such officials with regard to that decision.

3. All working papers, research material, and information used to make estimates of the need for, or expenditure of, public funds, for inclusion of my property within the boundaries of the University of Texas at Arlington.

4. All working papers, research material, and information used to make estimates of the need for, or expenditure of, public funds, for the possible, eventual purchase of my property.

5. All statements of the general course and method which the University uses, including all formal and informal procedures, to determine what property is to be included within the University's boundaries and to determine what property is to be purchased or acquired by the University, including any amendments made to such statements, methods or procedures since the date that my property was included within the University's boundaries.

6. All statements of procedures utilized by the University, or any division thereof, to purchase or acquire property for public use, including any amendments made to such statements of procedure since the date that my property was included within the University's boundaries.

7. The minutes, or other official record, of any and all meetings at which inclusion of my property within the University's boundaries was discussed or voted upon.

8. All administrative staff manuals and instructions to staff that relate to inclusion of any property within the University's boundaries, or purchase or acquisition of any property by the University, including any amendments made to such manuals and instructions since the date that my property was included within the University's boundaries.

9. All legislative acts authorizing the inclusion of my land within the authorized land

acquisition boundary of the University of Texas at Arlington.

In Open Records Decision No. 5 (1973), this office held that an appraisal study which had been prepared for use by the city of Houston staff in negotiations for the purchase of certain property was excepted from required disclosure under section 3(a)(5). There, it was observed that section 3(a)(5):

was intended to protect an appraisal study prepared for a governmental body in contemplation of the purchase of real or personal property, at least until the transaction [is] either completed or aborted.

The purpose of section 3(a)(5) was also discussed in Open Records Decision No. 222 (1979), where we said that:

[t]his exception is clearly designed to protect a governmental body in its planning and negotiating position in regard to particular transactions....

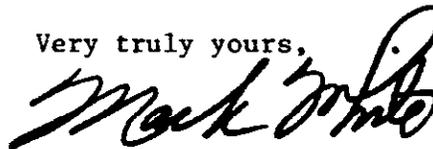
In that decision, we concluded that a private consulting firm's study of possible sites for a sludge treatment plant was not excepted from disclosure, but this was because one of the possible sites had already been purchased. Since a site had been purchased, the study could no longer be the basis for good faith negotiations regarding the proposed purchase of property. In Open Records Decision No. 234 (1980), we concluded that plans, locations and cost estimates relating to a proposed reservoir and water line project could be withheld under section 3(a)(5). At the time of the request, the project was in the planning and negotiation stage; no decision as to location had been made or property purchased; and the project had not yet been presented to the city council for approval. We held that "[s]o long as negotiations regarding the purchase of a site for the reservoir and water line have not been completed," the city could withhold all of the requested information. Finally, in Open Records Decision No. 265 (1981), we held that a resolution adopted by the Gulf Coast Waste Disposal Authority which revealed the proposed location of a waste treatment plant could be withheld under section 3(a)(5) until the purchase of the site was completed.

In our opinion, these decisions authorize you to withhold, under section 3(a)(5), those portions of the requested materials which, if released, would impair or tend to impair your "planning and negotiating position in regard to particular transactions." Open Records Decision No. 222 (1979). We conclude, in other words, that you should deal with the requestor's demands in the manner which follows.

You may withhold the materials requested in items one, three, four, and seven. The information requested in item four is clearly within the ambit of section 3(a)(5). The materials requested in items one and three were developed to assist the university in deciding whether to include the owner/requestor's land within the university's land acquisition boundaries, not to aid it in the actual negotiations for the purchase of the land, but they may also be withheld under section 3(a)(5). Land is included within these boundaries because the university considers it to be a prime candidate for purchase in the future. In order to make a reasoned decision as to whether to include the owner/requestor's land within its land acquisition boundaries, the university necessarily needed information concerning such factors as the value of the land, the uses which could be made of it, etc. The reports and evaluations requested in items one and three were developed to address these factors. Now, however, the university is engaged in negotiations which may culminate in the purchase of this land. The same factors which influenced the university's decision to include the land within its acquisition boundaries will now influence its negotiating position. These reports and evaluations may be withheld, therefore, because they contain information which could, if released, impair the university's present or future bargaining position. Finally, the information requested in item seven may be withheld for essentially the same reasons. Discussions of the question of whether to include the owner/requestor's land within the university's land acquisition boundaries will necessarily focus upon factors which will now influence the university's bargaining position with respect to that land.

On the other hand, we conclude that you must release the information requested in items two, five, six, eight, and nine. The release of the names and voting record which are sought in item two could not, in our view, have a deleterious effect upon the university's negotiating position vis-a-vis this land. The same is true of the materials requested in items five and six, where the requestor merely seeks copies of customary operating procedures. Presumably, these materials contain no information regarding specific land. The same is also true of the materials requested in item eight, which must therefore be released except to the extent that they contain information pertaining to specific land. Finally, we understand that you have already provided the requestor with a copy of the legislative acts to which item nine refers.

Very truly yours,



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