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# The Attorney General of Texas

March 9, 1983

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Open Records Decision No. 360

Re: Whether records relating to operation of municipal airport are excepted from public disclosure by section 3(a)(3) of the Open Records Act

Dear Mr. McCallum:

As attorney for the city of Addison, you have asked us to decide whether the city must comply with a request for information which was made under the Open Records Act, article 6252-17a, V.T.C.S. In his letter to you, the requestor stated that he wanted:

Any and all information collected, assembled or maintained by the city pursuant to law or ordinance or in connection with the transaction of official business and relating to the airport within the city of Addison also known as Addison Airport. Specifically, but not limited to the following, specific files are requested which are covered under article 6252-17a:

1. Mayor of Addison's files including correspondence between the city of Addison and Addison Airport of Texas, Inc. or any agent, employee or officer, shareholder or other individual associated with Addison Airport of Texas, Inc.

2. City manager's files for the same as identified in Item No. 1.

3. The city secretary's files for the same as identified in Item No. 1 and including Item No. 2 and including any items of its own.

4. City treasurer's files for any items the same as identified in Items 1, 2 and 3, plus any financial statements reflecting income and expenses of the lessee of the airport.

5. City fire marshall's files the same as identified in Items 1-4.

6. City building inspector's files the same items as identified in Items 1-5.

7. City attorney's files the same items as identified in Items 1-6.

You have informed us that, in your opinion, the requested documents can be separated into clearly-defined categories, and you have submitted to us copies of documents which, in your view, are representative of each category. In order to make clear our understanding of the nature and scope of this request, we reprint below the categories, and descriptions thereof, into which you placed the requested documents:

Grant Agreement - . . . representative of several grant agreements which provide for funding to the city from FAA.

Ground Lease - . . . a standard lease form that is signed by all persons desiring to rent a ground space from the city on the airport.

Applications for Permit to [sell] Fuel on the Airport - In addition to such documents there are plans and other information contained in the file concerning compliance with the requirement to [sell] fuel on the airport.

[Documents representing] various communications and correspondence between the fire department and other parties involving the sale of fuel on the airport.

[C]ommunications between the Town of Addison and the FAA concerning the operation of the Addison Airport.

[R]eport prepared by the police department concerning security on the airport.

[C]omplaints concerning the operation of the airport.

[F]inancial information received by the city from the operator of the airport.

You contend that the requested materials are excepted from required public disclosure by section 3(a)(3) of the Open Records Act. This section excepts:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or 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.

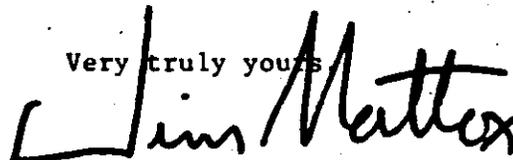
You have made the required determination.

The applicability of section 3(a)(3) depends upon the answer to two questions: (1) is the city of Addison now, or will it likely be, a party to civil or criminal litigation? and (2) if so, do the requested documents constitute "information relating to [that] litigation?"

We answer both questions in the affirmative. We have been informed of the filing of three different lawsuits alleging that, during the past few years, the city of Addison airport has been illegally operated. These suits allege, inter alia, that the city, members of its council, and Addison Airport of Texas, Inc., conspired to operate the airport in a monopolistic fashion in violation of various state and federal laws, and to the financial detriment of numerous parties. Each lawsuit is currently pending in the United States District Court for the Northern District of Texas. Thus, the city is clearly a party to pending litigation. We also conclude that the likelihood that the requested materials will be involved in the pending litigation is sufficiently great to enable us to conclude that the materials "relate" to the litigation within the meaning of section 3(a)(3). Given the nature of the allegations in these lawsuits, we believe it is readily apparent that the grant agreements, leases, applications, correspondence, complaints, and financial information which have been requested will very likely be directly implicated in the forthcoming legal proceedings.

We therefore conclude that the city may deny this request for information.

Very truly yours,



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