



The Attorney General of Texas

May 25, 1983

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Ms. Leila G. Alvarado
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Open Records Decision No. 382

Re: Whether records pertaining to a proposed sale of property by the Dallas Housing Authority are available to the public under the Open Records Act

Dear Ms. Alvarado:

The Dallas Morning News has asked the Dallas Housing Authority for information pertaining to the proposed sale of the Washington Place public housing project. We understand that Washington Place is a 347 unit project operated by the housing authority with federal funds furnished by the Department of Housing and Urban Development (HUD) under the federal public housing program. You have asked whether the housing authority must comply with this request. You contend that section 3(a)(3) of the Open Records Act, article 6252-17a, V.T.C.S., excepts the requested materials from required public disclosure.

Section 3(a)(3) excepts from disclosure:

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.

The Dallas Housing Authority is a "governmental body" subject to the Open Records Act. See Open Records Decision No. 268 (1981).

You have made the determination required by section 3(a)(3) that the requested information should be excepted from disclosure. This information consists of (quoting from the Dallas Morning News request letter):

1. The written request and all supporting information from the Housing Authority of the city of Dallas to the U.S. Department of Housing and Urban Development for approval of the sale of its Washington Place project to Baylor Hospital. By written request and all supporting information is meant the documentation required by 24 CFR Part 870 to be submitted by a PHA to the Field Office as part of its request for approval to sell public housing units. This request includes the following material submitted with the request:
 - (a) The Housing Authority's tenant relocation plan.
 - (b) The Housing Authority's current and projected needs for low income housing and their plan for replacement housing on a one-to-one basis.
 - (c) The Housing Authority's assessment of the physical condition of Washington Place projects and the feasibility of rehabilitation of that project.
 - (d) All tenant participation materials.
2. All HUD reviews, reports, memorandums, and correspondence which contains references to the Housing Authority of the city of Dallas' written request for approval of the sale of Washington Place projects. This includes all the documents which contain evaluations, comments, tentative approvals of or criticisms of the written request of the Housing Authority and these accompanying materials.
3. All A-95 review process materials in the possession of HUD which are relevant to the request for approval of the sale of the Dallas Housing Authority's Washington Place projects.
4. All HUD documents which either approve or disapprove the Housing Authority of the city of Dallas' policy of taking units at the Washington Place projects off the market pending approval of the sale.
5. All HUD documents [ap]proving a method of disposition of the city of Dallas Housing

Authority's Washington Place projects by a means other than public sale.

6. All documents relating to review of the proposed sale under Title VI and Title VIII of the Civil Rights Act, 42 USC 2000d et seq. and 42 USC 3601 et seq.
7. All documents relating to the appraisal or valuation of the Washington Place project, including any appraisals jointly commissioned by DHA and Baylor.

Information may be withheld under section 3(a)(3) if (1) litigation involving the governmental entity is either pending or reasonably anticipated; and (2) the information relates to that litigation. Open Records Decision No. 360 (1983). Now pending in the United States District Court for the Northern District of Texas is a lawsuit styled Gwain Wooten and B.J. Ruffin v. United States Department of Housing and Urban Development and the Housing Authority of the City of Dallas, Civil Action No. CA3-82-2017F. This is a class action which seeks to enjoin the sale of Washington Place. Therefore, in this instance, there is no dispute as to whether the first part of the test is satisfied. The only question is whether the requested information "relates" to the pending litigation.

In their complaint, the plaintiffs allege that they "share the following injuries with the other members of the class" that they seek to represent:

- (a) the illegal disposition of the project will result in displacement of Plaintiffs and the other Washington Place tenants. There is a high probability that they will be forced to move to racially segregated neighborhoods with much lower quality community facilities and services;
- (b) Plaintiffs and all members of the class are being discriminated against because of race;
- (c) Plaintiffs and other members of the class have been deprived of their right to participate in and have the benefit of the required environmental review procedures;
- (d) Because of the pending disposition, Defendants have intentionally failed to provide the funds and other resources necessary to repair and maintain Washington Place for over two years. Defendants have intentionally allowed one third of the units at Washington Place to remain vacant.

These actions have caused Plaintiffs and the other members of the class to live in unsafe and substandard housing.

They further allege that:

(i) There has been no determination by either HUD or DHA that Washington Place is obsolete or unusable for low income housing. There has been no determination by either HUD or DHA that there is no program of modification or repairs that is feasible or that such a program would not return the project to a useful life.

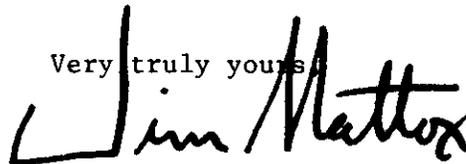
(j) Defendants have failed to make every reasonable effort to keep Washington Place within the low income housing inventory.

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(1) At no time prior to or after HUD's approval of the disposition of Washington Place has it taken any steps to analyze or review any possible adverse environmental effects of the requested disposition. The approval of the disposition is a 'major federal action' significantly affecting the quality of the human environment.

These complaints are numerous and cover a wide range of legal issues. We have considered each item of requested information in the light of these complaints and have reached two conclusions. First, most of the requested information concerns matters that will almost inevitably arise during the course of the lawsuit. Second, the remainder of the requested information deals with matters that are likely to arise during the suit. With respect to the latter information, we certainly cannot conclude that it concerns matters that will definitely not arise. Because we believe that it is highly likely that all of the requested information will be implicated in the forthcoming litigation, we conclude that it "relates" to the litigation within the meaning of section 3(a)(3). You may therefore deny this request in its entirety.

Very truly yours,



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