



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 23, 1990

Mr. Robert E. Shaddock
General Counsel
State Department of Highways
and Public Transportation
DeWitt C. Greer State
Highway Building
11th & Brazos
Austin, Texas 78701-2483

Open Records Decision No. 564
Re: Whether appraisal information on real property acquired by the state may be withheld when it seeks to acquire adjacent parcels of land (RQ-1920)

Dear Mr. Shaddock:

You have received a request under the Open Records Act, article 6252-17a, V.T.C.S., for appraisal reports concerning a parcel of land acquired by your department in a project in Harris County. You state that the total project consists of over 725 parcels, and the parcel in question is one of 74 located in segments 8 and 9 of this project. Only two of the 74 parcels had been acquired at the time you received this request. To maintain the state's negotiating position with respect to the remaining parcels in these segments and in the project, you believe that it is necessary to withhold appraisal information for parcels already acquired until you have completed negotiations or condemnation proceedings for the remaining parcels. You claim that section 3(a)(5) of the Open Records Act allows you to withhold this information.

Section 3(a)(5) of the Open Records Act excepts the following information from availability to the public pursuant to section 3(a):

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.

V.T.C.S. art. 6252-17a, § 3(a)(5) (emphasis added). This exception was designed to protect a governmental body's planning and negotiating position with respect to particular transactions. See Open Records Decision Nos. 357 (1982); 222 (1979).

Section 3(a)(5) applies to information pertaining to appraisals or purchase price of real property, not only to the particular appraisal report prepared for a specific parcel of property. Parcels of land that are adjacent or near one another presumably would have some similar features that are relevant to valuing the land. Thus, an appraisal report for one parcel of land could constitute information pertaining to appraisals or pricing of nearby land. The interpretation of section 3(a)(5) proposed by the Highway Department is consistent with the language of this section.

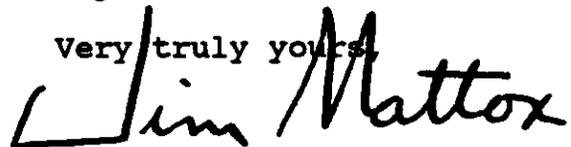
It is also consistent with the policy underlying section 3(a)(5). Information about the appraisal of acquired parcels of land could help owners of adjacent or nearby land to determine how the department would value their property, and thus strengthen their bargaining position against the state. We agree that section 3(a)(5) can protect appraisal information about a parcel of property acquired in advance of other parcels, if release of this information would harm the department's negotiating position with respect to the other parcels of land.

Whether the appraisal report on a specific parcel of property would constitute information pertaining to the appraisal or purchase price of other land is a fact question which cannot be resolved in a formal decision of this office. Once the department makes a good faith determination that release of an appraisal report of property it has acquired would damage its negotiating position with respect to nearby parcels, we will accept that determination unless the records or other information show the contrary as a matter of law. See Open Records Decision No. 426 (1985) (relying on governmental body's conclusion that certain information constitutes a trade secret). In the present case, where the department has acquired two parcels of land out of 74 in the segments, we cannot say as a matter of law that its decision is incorrect. Accordingly, you may withhold the appraisal report.

S U M M A R Y

Section 3(a)(5) of the Open Records Act applies to an appraisal report concerning a parcel of land acquired by the State Department of Highways and Public Transportation if release of the information would damage its negotiating position in the acquisition of nearby parcels of property. Whether a particular appraisal report on a specific parcel of property constitutes "information pertaining to appraisals or purchase price" of other real property is a fact question which cannot be answered in a formal decision of the attorney general. The department must make a good faith determination on this question, subject to review by this office.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, prominent "J" and "M".

J I M M A T T O X
Attorney General of Texas

MARY KELLER
First Assistant Attorney General

LOU MCCREARY
Executive Assistant Attorney General

JUDGE ZOLLIE STEAKLEY
Special Assistant Attorney General

RENEA HICKS
Special Assistant Attorney General

RICK GILPIN
Chairman, Opinion Committee

Prepared by Susan Garrison
Assistant Attorney General