



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

October 10, 1990

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

OR90-469

Dear Mr. Shaddock:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10331.

The State Department of Highways and Public Transportation received an open records request for "the working papers and investigation report regarding the topping of and removal of live oak trees along North Central Expressway." You state that you have released to the requestor some of the requested information, but that you seek to withhold other information pursuant to sections 3(a)(1), 3(a)(5), and 3(a)(11) of the Open Records Act.

You indicate that pursuant to Open Records Decision No. 564 (1990), section 3(a)(5) protects information pertaining to the appraisal and purchase price of certain real property that the department has purchased because this type of information could be utilized by owners of adjacent or nearby property to determine the value the department would assign to their respective properties. We agree. Consequently, you may withhold the documents designated D.01, D.04, and D.06 through D.12 pursuant to section 3(a)(5).

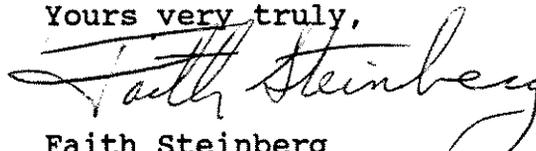
Your request for section 3(a)(11) protection of a "draft" document is governed by Open Records Decision No. 559 (1990) (copy enclosed). The document at issue here consists of proposed answers to seventeen questions posed to the department concerning the tree topping and related subjects. Information contained in the "draft" document that does not appear in the final version of the document consists of the opinion of others as to what the document

should contain, and as such constitutes information that comes under the protection of section 3(a)(11). Because any factual information contained in the draft document is inextricably intertwined with protected information, you may withhold the answer portions of documents A.06 through A.13 pursuant to section 3(a)(11). See Open Records Decision No. 313 (1982). The questions, however, must be released.

Finally, the affidavit signed by one of the department's staff attorneys, designated F.CC.1 through F.CC.3, is purely factual in nature. Consequently, this document does not come under the protection of section 3(a)(11). See Open Records Decision No. 450 (1986). For similar reasons, the affidavit does not come under the protection of the attorney-client privilege aspect of section 3(a)(1) because it does not contain legal advice nor does it reveal confidential client information. See generally Open Records Decision No. 462 (1987) at 9-11 (copy enclosed). This document must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-469.

Yours very truly,



Faith Steinberg
Assistant Attorney General
Opinion Committee

FS/RWP/le

Ref.: ID# 10331
ID# 10652

Enclosures: Open Records Decision Nos. 559, 462

cc: Sally Giddens
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