



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

February 1, 1991

Mr. Nelson A. Clare
Environmental Counsel
City Public Service of
San Antonio, Texas
P.O. Box 1771
San Antonio, Texas 78296

OR91-067

Dear Mr. Clare:

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# 11302.

The City Public Service of San Antonio (the service) received an open records request for information concerning the proposed site of a radio communications tower to be constructed by the service. We note that you did not submit with your correspondence to this office a copy of the written request for the information at issue. In the future, please include a copy of the written request when seeking an open records decision pursuant to section 7 of the act.

You state that you have released to the requestor a general topographical map that identifies the general area within which the proposed tower must be constructed; you have withheld, however, other information regarding the specific locations of proposed sites, which you contend comes under the protection of section 3(a)(5) of the Open Records Act. Section 3(a)(5) protects:

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. (Emphasis added.)

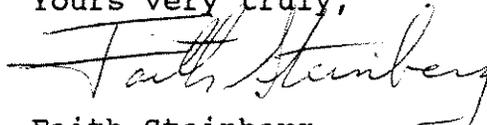
The purpose of section 3(a)(5) is to protect a governmental body in its planning and negotiation with regard to a particular transaction; this exception applies only until

negotiations for the particular transaction are concluded and the purchase of the property is complete. Open Records Decision No. 222 (1979). A previous determination of this office, Open Records Decision No. 234 (1980), resolves your request. For this reason, you may withhold the requested information.

You also inquire whether governmental bodies such as the service may determine for themselves that a "previous determination" of this office makes unnecessary a request for an open records decision. With many of the exceptions listed in section 3(a) of the act, it is impossible for governmental bodies to determine whether and to what extent previous open record decisions govern requested information, making necessary a request for an open records decision from this office. Because section 3(a)(5) is a narrow and clear-cut exception, a governmental body may rely on prior open records decisions applying this exception, so long as the fact situation in a particular instance closely parallels that found in an earlier ruling. See Open Records Decision No. 575 (1990); see also City of Houston v. Houston Chronicle Publishing Co., 673 S.W.2d 316, 320-323 (Tex. App. - Houston [1st Dist.] 1984, no writ) (specific information previously held to be excepted from public disclosure by section 3(a)(8) may be withheld despite the fact that city did not request open records decision).

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 OR91-067.

Yours very truly,



Faith Steinberg
Assistant Attorney General
Opinion Committee

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Ref.: ID# 11302