



Office of the Attorney General

State of Texas

August 14, 1992

DAN MORALES

ATTORNEY GENERAL

Mr. Richard D. Monroe
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 East 11th Street
Austin, Texas 78701-2483

OR92-475

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 16850.

The Texas Department of Transportation (the "department") has received a request for information relating to certain property appraised by the department. Specifically, the requestor seeks "the appraisal value or a copy of the state's appraisal of the following property: acct. number 8014-1-57 . . . parcel number 239, 13580 Research." You have submitted the requested appraisal report to us for review. You seek to withhold the report under Open Records Act sections 3(a)(3) and 3(a)(5).

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts

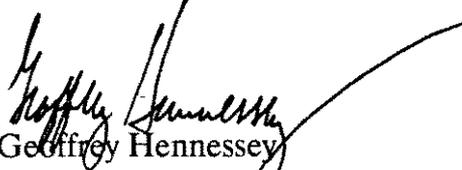
information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). "Whether litigation is reasonably anticipated must be determined on a case-by-case basis." Open Records Decision No. 452 (1986) at 4. In Open Records Decision No. 311 (1982) (copy enclosed), this office held that the likelihood of condemnation hearings to acquire a specific tract of land for a proposed power transmission line indicated that litigation was "reasonably anticipated."

You advise that the department intends to file condemnation proceedings under the State's eminent domain power to acquire the property which is the subject of the request for information at issue here. We conclude that litigation may be reasonably anticipated. We also agree with your determination that the requested information relates to the anticipated litigation. Accordingly, the requested information may be withheld from required public disclosure under Open Records Act section 3(a)(3). Because we resolve this matter under section 3(a)(3), we need not address the applicability of section 3(a)(5) at this time.

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 OR92-475.

Yours very truly,


Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

GH/GCK/lmm

Enclosure: Open Records Decision No. 311

Ref.: ID# 16850

cc: Ms. Martha Teutsch
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