



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 18, 1993

Mr. Russell L. Masters  
General Manager  
Edwards Underground Water District  
P.O. Box 15830  
San Antonio, Texas 78212-9030

OR93-257

Dear Mr. Masters:

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# 18997.

The Edwards Underground Water District (the "district") has received a request concerning abandoned wells. Specifically the requestor seeks:

- (a) Names and addresses of all property owners, who [the district] has required to plug wells in the past three (3) years; and
- (b) Names and addresses of all property owners, who [the district] has determined must plug wells located on their respective property.

You state that the information requested in part (a) is available to the requestor but that the information requested in part (b) is excepted by sections 3(a)(3) and 3(a)(4) of the Open Records Act.

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.

Information must relate to litigation that is pending or reasonably anticipated to be excepted under section 3(a)(3). *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex.

App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Absent special circumstances, once information has been obtained by all parties to litigation, *e.g.*, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982).

You state that "[t]he records in question, are active cases where the District is currently pursuing liens or are subject to litigation against the properties where the District has closed wells or identified wells to be closed at District expense." You have submitted for our review two form letters to well owners about their abandoned wells which you state are responsive to part (b) of the request. The letters were sent to the well owners, the defendants or prospective defendants in any such cases. Since both parties to any litigation or pending litigation concerning the wells have already seen the records, no section 3(a)(3) argument can be made. Open Records Decision Nos. 349, 320.

You also state that the requestor has threatened legal action against the district but has now "stated that he was simply suspending his actions against the District in his request for information." You have not explained, however, how or why the requested documents would relate to any litigation between the requestor and the district nor do the documents supply such an explanation on their face. You have not made the requisite showing that litigation is reasonably anticipated *and* that the records relate to that litigation. Therefore, you may not withhold the information under section 3(a)(3) of the Open Records Act.

Section 3(a)(4) excepts "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in commercial transactions. Open Records Decision No. 593 (1991) at 2. It has most often been applied to competitive bidding situations prior to the award of a contract. *See, e.g.*, Open Records Decision Nos. 541 (1990) at 4-5; 331 (1982); 232 (1979); 75 (1975). The governmental body must demonstrate the possibility of some specific harm in a particular competitive situation. Open Records Decision No. 593.

Apparently, in situations where the property owner has refused or simply failed to have the well plugged, the district will send "a person, firm or corporation employed by the District to enter upon [the] property and plug the well." The district bills the property owner for the expenses incurred in having the well plugged and upon the owner's failure to pay the bill may file a lien against the property. You contend that disclosure of the names and addresses of property owners with wells which must be plugged "would give this vendor unfair advantage to his competitors in the bidding process" and that "[u]nsolicited consultation between the property owner and the vendor could disrupt the District's selection of the most responsive bidder to perform well plugging activities at the District's expense."

The purpose of section 3(a)(4) is to protect the interests of the governmental body, not that of the private parties. Open Records Decision No. 592 (1991) at 9 (citing the summary). Therefore, it is immaterial whether release of the information would give the

requestor "unfair advantage to his competitors." Furthermore, you have not shown how the disclosure of the names and addresses of all persons whose wells must be plugged would interfere with the district's ability to obtain the most favorable bids, nor is this apparent from the face of the documents. An allegation of a remote possibility that a competitor might gain some unspecified advantage from disclosure is not sufficient to invoke section 3(a)(4). Open Records Decision No. 463 (1987).

You also assert that "[c]laims from the vendor that his company could have done the work cheaper or better could affect litigation procedures if the District tries to recover expenses for closing a well." This is not the kind of harm section 3(a)(4) was intended to prevent.

We conclude that the district has not made a sufficient showing of competitive harm under section 3(a)(4). Accordingly, you may not withhold the requested documents under section 3(a)(4) of the Open Records Act.

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 contact our office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/LBC/le

Ref: ID# 18997

Enclosures: Marked documents

cc: Mr. Kyle Courtney  
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(w/o enclosures)