



Office of the Attorney General
State of Texas

July 21, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Brad Rockwell
Patton, Boggs & Blow
100 Congress Avenue, Suite 2100
Austin, Texas 78701

OR93-473

Dear Mr. Rockwell:

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# 20294.

The Grand Prairie Metropolitan Utility and Reclamation District of Dallas County (the "district"), which you represent, has received a request for seven categories of information. Specifically, the requestor seeks:

1. A current list of all bondholders of record of the \$7,750,000 Grand Prairie Metropolitan Utility and Reclamation District Unlimited Tax Bonds, Series 1985 (the "Bonds") on file with the Paying Agent/Registrar for the Bonds;
2. A current list of all bondholders of record of the \$8,700,000 Grand Prairie Metropolitan Utility and Reclamation District Unlimited Tax Bonds, Series 1986 (the "Bonds") on file with the Paying Agent/Registrar for the Bonds;
3. All letters or other correspondence to or from the District relating to the District's default on the Bonds;
4. Minutes of all District Board of Directors meetings;
5. All District election documents, including orders calling District elections, orders canvassing the returns of District elections and Notices of election;
6. All Director's deeds and related documents, including Deeds of Trust, Promissory Notes, Releases of Lien, and Consents to Conveyance;

7. All financing or reimbursement agreements related to the construction of the facilities within the District prefunded by I-30 Partners, Ltd. or any other parties and any other agreements or contracts relating to the construction of facilities within the District.

You advise us that the district made most of the requested information available to the requestor, but wishes to withhold the remaining documents. If a governmental body receives a written request for information that it believes is within one of the exceptions stated in section 3 of the Open Records Act, it must seek a ruling from the attorney general within ten days of receiving the request. V.T.C.S. art. 6252-17a, § 7(a). The district's general counsel received the request for information under the Open Records Act on April 29, 1993, and you requested an open records ruling decision by a letter to this office dated May 14, 1993. Consequently, you did not request a decision within the ten-day deadline established by section 7(a) of the act.

When a governmental body does not request a decision within ten days of receiving a request for information, the information at issue is presumed to be public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See id.* Normally, the presumption of openness can be overcome only by a compelling demonstration that the information should not be released to the public, *i.e.*, that the information is deemed confidential by some other source of law or that third party interests are at stake. Open Records Decision No. 150 (1977).

You have submitted to us for review the information in question and claim that it is excepted from required public disclosure by sections 3(a)(3), 3(a)(7), and 3(a)(11) of the Open Records Act.¹ Your claims under sections 3(a)(3) and 3(a)(11) are waived, because you raise no other source of law or third-party interests.

You state that one set of withheld documents consists of correspondence between counsel for the district and the district, and you raise section 3(a)(7) with respect to those documents. You also discuss the relationship of section 3(a)(7) to another source of law, section 1.05(a) of the Texas Disciplinary Rules of Professional Conduct.

¹You raise section 3(a)(1) of the Open Records Act in conjunction with the attorney-client privilege and the attorney work product doctrine. Although this office has in the past cited section 3(a)(1) to except from disclosure information within the attorney-client privilege, the privilege may be properly invoked only under section 3(a)(7). *See* Open Records Decision No. 574 (1990) at 2. In addition, section 3(a)(1) does not encompass the attorney work product doctrine. Open Records Decision No. 575 (1990) at 2. You raise section 3(a)(6), but do not identify any documents to which it might apply.

We are presently considering in a pending open records file designated RQ-557 whether a governmental body's failure to meet the ten-day deadline under section 7(a) constitutes a waiver of the attorney-client privilege found in section 3(a)(7) of the Open Records Act. Since your request raises the same question, we will defer addressing your section 3(a)(7) argument until we have resolved this issue in RQ-557. You may withhold the attorney-client correspondence for the present time. The remaining information must be made available to the requestor.

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 this office.

Yours very truly,



Susan Garrison
Assistant Attorney General
Open Government Section

SLG/GCK/jmn

Ref: ID# 20294
ID# 20393
ID# 20403
ID# 20698
ID# 20699
ID# 20726

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