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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

March 28, 1991

Mr. Michael Anthony Moss
Assistant City Attorney
Legal Department
Post Office Box 1562
Houston, Texas 77251-1562

OR91-153

Dear Mr. Moss:

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 requests were assigned IDs# 11746 and 11901.

You have received two letters asking for certain information concerning a proposed airport site. Similar or identical information was excepted from disclosure in OR90-594 (1990) under section 3(a)(3), the litigation exception. Information concerning the proposed airport site was also the subject matter of our ruling in OR91-082 (1991). In OR91-082 (1991) we stated that section 3(a)(3) no longer applied because the litigation that had been pending was dismissed on January 28, 1991, and that the city must disclose the requested information. You request that we reconsider our ruling in OR91-082.

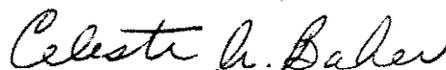
You assert that section 3(a)(3) continues to except from disclosure information concerning the proposed airport site. You note that section 3(a)(3) excepts from disclosure information that is the subject matter of either current litigation or reasonably anticipated litigation. You contend that further litigation is reasonably anticipated and that the requested information reasonably relates to that anticipated litigation. The lawsuit that has been dismissed was brought by the Houston Audubon Society to stop bulldozing of the Katy Hockley prairie. The agreed order entered by the court states that the parties have agreed that the lawsuit should be dismissed without prejudice.

You have provided us with copies of news articles indicating that future litigation is reasonably anticipated. Those articles indicate future litigation is possible against federal agencies, not the city. You also contend that the Houston Audubon Society's agreement to a dismissal

without prejudice is concrete proof of its intent to pursue litigation in the future. The dismissal without prejudice standing alone or in conjunction with the statement by the society's attorney that the society desired not to limit its future options does not establish that future litigation against the city is reasonably anticipated. Even express threats of litigation against the city without more do not suffice to make section 3(a)(3) applicable. Open Records Decision No. 331 (1982). Thus, section 3(a)(3) is not applicable and the requested information must be disclosed. See Open Records Decision Nos. 551 (1990); 328 (1982) (copies enclosed).

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 OR91-153.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/lcd

Ref.: ID# 11746, 11829, 11888, 11901

Enclosure: Open Records Decision Nos. 551, 331, 328;
OR91-082

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