



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

July 29, 1991

Mr. Mario Aguilar
Administrative Law Attorney
Texas Housing Agency
P.O. Box 13941, Capitol Station
Austin, Texas 78711-3941

OR91-341

Dear Mr. Aguilar:

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# 11582.

The Texas Housing Agency received a written request for the following information:

- (1) All documents concerning a \$330,000 loan the Texas Housing Agency made to the Houston Cooperative Foundation;
- (2) All documents relating to a commitment for low-income rental housing tax credits the Texas Housing Agency issued for the benefit of the San Jacinto Garden Apartments; and
- (3) All correspondence between James S. Robinson and the Texas Housing Agency concerning the San Jacinto Garden Apartments.

You have submitted for our inspection information that you believe is responsive to the request. You contend that the information is excepted from required public disclosure by sections 3(a)(1) and 3(a)(3) of the Open Records Act.

You claim that the requested information is excepted from required public disclosure under section 3(a)(1) as privileged communications between attorney and client and attorney work product. Open Records Decision No. 574 (1990), however,

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determined that these concepts were more appropriately encompassed by other exceptions to disclosure.

For example, Open Records Decision No. 429 (1985) recognized that the work product doctrine represents merely one aspect of section 3(a)(3), which 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.

However, once the litigation for which an attorney's work product was prepared has reached a conclusion, section 3(a)(3) ceases to protect the information from disclosure. Open Records Decision No. 574 (1990) at 6.

You advise that much of the requested information was prepared by an attorney representing the Texas Housing Agency in the case of *Houston Cooperative Foundation, Inc. v. Texas Housing Agency*, Civil Action No. H-89-4394 (S.D. Tex. - Houston Div.). We have been informed by the clerk of the court for the Southern district of Texas that this case was referred to the federal bankruptcy court in Houston on January 13, 1990. The clerk for the bankruptcy court advises us that the related bankruptcy case, *In re Houston Cooperative Foundation, Inc., aka/dba Co-Op Houston*, Cause No. 89-08992-H2-11, was closed on March 12, 1991. It would appear, then, that the litigation to which the requested information relates has reached a conclusion. Section 3(a)(3) therefore will not protect the work product generated in pursuit of this litigation. Open Records Decision No. 574 (1990).

Open Records Decision No. 574 also determined that the attorney-client privilege is incorporated into section 3(a)(7) rather than section 3(a)(1). Section 3(a)(7) excepts information regarding

matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are

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prohibited from disclosure, or which by order of a court are prohibited from disclosure.

The decision noted that section 3(a)(7) protects information that reveals either client confidences communicated to an attorney or the attorney's legal advice or opinion communicated to the client, but does not protect basic factual information from attorney to client or between attorneys representing the same client. The governmental body may, however, withhold factual material that is so inextricably intertwined with excepted material that separation would be impractical. Open Records Decision Nos. 468 (1987); 420 (1984).

We have reviewed the documents offered for our inspection and have determined that most of them may be withheld in whole or in part. We have marked the documents accordingly. A summary of our findings is appended to this letter.

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 OR91-341.

Yours very truly,


Steve Aragon
Assistant Attorney General
Opinion Committee

SA/lb

Ref.: ID# 11582

Enclosure: Open Records Decision No. 574 (1990)

cc: Ms. Alice Brown
Paralegal
Liddell, Sapp, Zivley, Hill & LaBoon
Texas Commerce Tower
Houston, Texas 77002

APPENDIX

ITEM #	DESCRIPTION	STATUS
1	Letter dated Aug. 1, 1990	Withhold
2	Letter dated May14, 1990 and attachment	Withhold all
3	Letter dated Dec. 18, 1990 and attachment	Withhold all
4	Handwritten notes of teleconference	Withhold all
5	Legal Division information request dated Aug. 15, 1990 and attachment	Withhold all
6	Letter dated June 7, 1990	Release
7	Letter dated Nov. 16, 1990	Withhold
8	Telecopy dated Nov. 26, 1990	Withhold
9	Letter dated Aug. 1, 1990 (duplicate of Item #1)	Withhold