



Office of the Attorney General
State of Texas

August 20, 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

OR92-496

Dear Mr. Monroe:

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# 16659.

The Texas Department of Transportation (the "department") has received two requests for information relating to certain property the department hopes to acquire in connection with a highway construction project. Specifically, the requestor seeks "copies of all correspondence regarding the offer and condemnation proceedings" on Project 4018-1-6, Parcel 4, at S.H. 121 in Collin County. You seek to withhold the requested information under sections 3(a)(3) and 3(a)(5) of the Open Records Act.

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

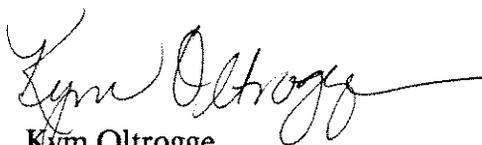
information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, 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 eminent domain proceedings to acquire the property which is the subject of the request for information at issue here. We conclude, therefore, 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 section 3(a)(3) of the Open Records Act. As 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 OR92-496.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KKO/GCK/lmm

Enclosure: Open Records Decision No. 311

Ref.: ID# 16659

cc: Mr. Phillip R. Doepfner
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