



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Mr. Richard D. Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 East 11th Street
Austin, Texas 78701-2483

OR94-348

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 23679.

The Texas Department of Transportation (the "department") received a request for "any hydraulic study data which has been developed and information as to the water-surface profile impacts" of one of the department's projects as it impacts on land owned by the requestors' client. The project is referred to as "SH 121: From Denton Tap Road in Dallas County to Elm Fork of Trinity River." You have informed this office that the land being discussed in the requestor's letter will be the subject of a condemnation proceeding that has been set for trial. You contend that this information is excepted from disclosure under section 552.103 of the Open Records Act. Section 552.103(a)(1) provides an exception for information

relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

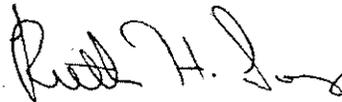
The department has submitted to this office for review a hydraulic study and various documents that reference "S.H. 121: From Denton Tap Road in Dallas County to Elm Fork of Trinity River." For information to be excepted under section 552.103(a), the

department must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984 writ ref'd n.r.e); Open Records Decision No. 551 (1990) at 4. Since the central issue in a condemnation case is the value of the property being acquired, it is the department's burden to show how such information would relate to the valuation of the property. Open Records Decision No. 429 (1985) at 2-3. It is not apparent to this office that the hydraulic study is related to the valuation of the property at issue, nor have you explained how the study relates to the valuation. The department has therefore not met its burden of showing the applicability of section 552.103(a) in regard to the hydraulic study.

The other submitted documents do not appear to provide hydraulic study data or water surface profile impact information, which was the information requested. It is the obligation of the department to make a good faith effort to locate requested information. Open Records Decision No. 561 (1990) at 8. However, if the department has no information responsive to the request, it is not required to provide information to the requestor. Open Records Decision Nos. 561 at 9 (governmental body does not have to obtain new information); 452 (1986) at 3 (Open Records request applies to information in existence when request is received); 362 (1983) at 2 (governmental body does not have to supply information which does not exist).

If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/KKO/rho

Ref.: ID# 23679

Enclosures: Submitted documents

cc: Mr. Eddie Vassallo
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(w/o enclosures)