



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 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

OR94-681

Dear Mr. Monroe:

You ask that this office reconsider its determination in Open Records Letter No. 94-348 (1994). In that ruling, we concluded that the Texas Department of Transportation ("the department") had not met its burden under section 552.103 of the Government Code to establish that a requested hydraulic study relates to a pending condemnation proceeding.

We recognize that a hydraulic study of a piece of land relates to a condemnation suit involving that land. However, the hydraulic study at issue references a different county from that in which the land that is the subject of the condemnation proceeding is located. The study was apparently prepared in connection with a 1991 project to widen a bridge over Timber Creek in Denton County. The study concerns the hydraulics of the Timber Creek and the Elm Fork of the Trinity River in the vicinity of that bridge. According to the letter from the requestor, the land that is the subject of the condemnation proceeding is in Dallas County. Therefore, the study does not appear to relate to the land that is the subject of the condemnation proceeding. Nor did you explain the relatedness of the study to the land that will be condemned.

In fact, before we considered the relatedness of the hydraulic study, we questioned the responsiveness of this particular study to the request. The request was for "any hydraulic study data which has been developed and information as to the water-surface profile impact of this present project upon his subject parcels."(Emphasis added.) The requestor seems to be referring to a project discussed in the previous paragraph, "a 404

Fill Application" for land in Dallas County. The 1991 hydraulic study, concerning as it does the widening of a bridge in Denton County, does not appear to be information as to the water-surface profile impact of the 404 Fill Application. Moreover, you also seemed unsure that the study was responsive. You stated that the study "is arguably responsive to the request." Letter from Richard D. Monroe to Honorable Dan Morales (Dec. 15, 1993).

In your original request for an open records decision, you provided no explanation as to how this particular study prepared for a 1991 project in Denton County relates to litigation involving the condemnation of land in Dallas County. Consequently, we were unable to conclude that this hydraulic study relates to the pending condemnation suit.

The Open Records Act place on a governmental body the burden of establishing why and how an exception applies to requested information. Open Records Decision Nos. 542 (1990); 532 (1989); 515 (1988). The department did not meet its burden of establishing why and how section 552.103 applies to the requested information. Accordingly, the information was presumed to be public. As you have not submitted compelling reasons to overcome this presumption, such as confidentiality under another source of law or third party privacy interest, we decline to reconsider Open Records Letter No. 94-348.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/LBC/rho

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