



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 31, 1993

Ms. Tamara Armstrong
Assistant County Attorney
Travis County Courthouse
P.O. Box 1748
Austin, Texas 78767

OR93-777

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 22335.

The Travis County Commissioner for Precinct 2² (the "commissioner") received an open records request for "selected pages of all letters sent and received on the BCCP and all information in your office on BCCP." At the time the commissioner received the open records request, a bond issue was before Travis County voters that would authorize the county's purchase of real property that would serve as a habitat for certain endangered species. Although the voters voted down the bond issue in the subsequent election, you have informed a member of our staff that the county nevertheless currently is exploring other possible means of acquiring the property; you therefore contend that certain records pertaining to the location and estimated value of specific parcels of land the county is considering acquiring come under the protection of section 552.105 of the Government Code. You also seek to withhold other records pursuant to the attorney-client privilege.

¹The Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²You inform us that the Travis County Auditor and the Travis County Judge each received an open records request that is identical to the request that is the subject of this ruling. Those officials determined that all the information their offices held was public information. We assume that the records the county auditor and county judge released are substantially different from those you now seek to withhold; generally, once a governmental body releases information to the public, the governmental body may not invoke the act's exceptions to disclosure with regard to that information. See Gov't Code § 552.007(b). Consequently, if the records at issue here are the same as those that the requestor has received, the county may not withhold them now.

Section 552.105 protects from required public disclosure information that reveals

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

The purpose of section 552.105 is to protect a governmental body in its planning and negotiation with regard to a particular transaction; this exception applies only until negotiations for the particular transaction are concluded and the purchase of the property is complete. Open Records Decision Nos. 234 (1980) at 2 (interpreting predecessor statute); 222 (1979) at 1-2 (same). The records you have designated as Exhibits A and B clearly consist of the types of information that section 552.105 protects. Based on your representation to this office that Travis County currently is pursuing the possibility of acquiring the properties listed in Exhibits A and B, the commissioner may withhold those records pursuant to section 552.105.

Although you raise the attorney-client privilege in the context of section 552.101, this privilege more properly falls under section 552.107(1), which protects "information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas." See Open Records Decision No. 574 (1990) at 2. Where an attorney represents a governmental entity, the attorney-client privilege protects only the attorney's legal advice and confidential attorney-client communications. *Id.*

The documents contained in Exhibit C consist solely of an assistant county attorney's legal opinions concerning certain aspects of the Balcones Canyon Conservation Plan. The commissioner therefore may withhold Exhibit C in its entirety pursuant to section 552.107(1) of the Government Code.

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 contact our office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/RWP/rho

Ref.: ID# 22335

Enclosures: Submitted documents

cc: Mr. Ira Calkins
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(w/o enclosures)