



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 8, 1995

Mr. Tracy Pounders  
Assistant City Attorney  
City of Dallas  
Office of the City Attorney  
City Hall  
Dallas, Texas 75201

OR95-373

Dear Mr. Pounders:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 32316.

The City of Dallas (the "city") has received a request for information regarding a proposed sports and entertainment facility (the "Arena"). The city has released some information responsive to the request, but seeks to withhold an appraisal and a document entitled "Memorandum of Understanding Regarding Appraisals," which you describe as procedures regarding appraisals, pursuant to sections 552.101, 552.104, and 552.105 of the Government Code.

Section 552.105 excepts from disclosure:

- (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.

Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. Open Records Decision No. 564 (1990). The exception applies to information regarding appraisals or purchase price, not merely

to particular appraisal reports prepared for specific properties. *Id.* This office will accept a governmental body's good faith determination that release of an appraisal report would damage its future negotiating position, unless the contrary is clearly shown as a matter of law. *Id.* Section 552.105 excepts information pertaining to negotiations for the acquisition of real or personal property until the transaction has been completed. Open Records Decision No. 310 (1982). Once a transaction has been completed, all factual information related thereto is available unless excepted by some other provision of the Open Records Act. *Id.*

The city states that the appraisal may be used in the development of the Arena and that "[p]remature release of [the appraisal] will give advance notice to the site owner of the City's valuation of his site, which will damage the City's ability to negotiate advantageous purchase terms." On the basis of these assertions, we conclude that the appraisal may be excepted from required public disclosure under section 552.105.<sup>1</sup>

The city also contends the release of the Memorandum of Understanding Regarding Appraisals will harm its negotiating position: "[I]f the developer knows that the property will be appraised in a particular manner . . . the City will be unable to take advantage of this information in its negotiations with the developer." The Memorandum of Understanding Regarding Appraisals is an agreement between the city and the owners of the tract. Obviously, the owners of the tract are aware of the contents of the Memorandum of Understanding Regarding Appraisals. Therefore, we fail to see how its release would affect the city's planning and negotiating position with regard to the purchase of the tract. For this reason, we conclude that the Memorandum of Understanding Regarding Appraisals may not be withheld under section 552.105.

Section 552.104 excepts "information that, if released, would give advantage to a competitor or bidder." Section 552.104 is designed to protect the interests of the governmental body as in a competitive bidding situation for a contract or benefit. Open Records Decision No. 592 (1991) at 8. A governmental body may also assert section 552.104 to withhold information to maintain its competitive advantage in the marketplace if it is specifically authorized by law to engage in such competition. Open Records Decision No. 593 (1991) at 4. A governmental body must show not only that it is authorized to engage in marketplace competition, but also that the release of the information would harm its interests in a specific competitive situation. *Id.* at 5-9.

The city asserts that it is competing with other cities for the location of the Arena and that the release of the Memorandum of Understanding Regarding Appraisals would place it at a competitive disadvantage. The city has neglected to demonstrate, however, that it is authorized to engage in marketplace competition with respect to the Arena.

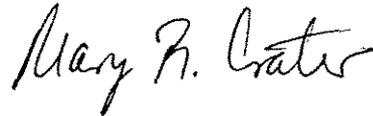
---

<sup>1</sup>Because we conclude that the appraisal may be withheld under section 552.105, we do not address whether it may be withheld under section 552.101.

Nor has the city shown how the release of the information would harm its competitive interests. For this reason, we conclude that the city has not met its burden to withhold the Memorandum of Understanding Regarding Appraisals under section 552.104. The city does not assert that the Memorandum of Understanding Regarding Appraisals may be excepted under any other provision. Therefore, it must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/MAR/rho

Ref.: ID# 32316

Enclosures: Submitted documents

cc: Ms. Lucrezia Cruen  
KDFW-TV  
400 N. Griffin Street  
Dallas, Texas 75202  
(w/o enclosures)