Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1996

Mr. Fred Weldon
General Counsel
Texas National Research Laboratory Commission
Central Laboratory Facility, Mezzanine
2275 N. Highway 77, Suite 100
Waxahachie, Texas 75165

OR96-0140

Dear Mr. Weldon:

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# 33103.

The Texas National Research Laboratory Commission (the "commission") received a request for property acquisition information relating to the Superconducting Supercollider project in Ellis County to include the original offers made for properties, the price paid for each property acquired to date, and the costs of acquiring each property along with costs of litigation relating to properties already acquired or in the process of being acquired. You have submitted a database summary of the offer/price information and assert that this information is excepted from disclosure pursuant to sections 552.103 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 only to particular appraisal reports or purchase prices related to specific properties. *Id.* at 2. Whether particular information falls under section 552.105(2) is a question of fact. This office will accept a governmental body's good faith determination that release of particular information would damage its future negotiating position, unless the contrary is clearly shown as a matter of law. *Id.* In this case, you have demonstrated that release of the offers made and subsequent purchase price of parcels would damage the commission's negotiating position in acquiring the remainder of the properties to be purchased in conjunction with the Superconducting Supercollider project. Therefore, you may withhold the original offers and subsequent purchase prices for the acquired properties.[1]

The requestor seeks litigation costs incurred in acquiring each property. You have not submitted information responsive to this portion of the request nor have you shown how release of litigation costs will affect the commission's negotiating position in acquiring the remaining properties. Although you generally claim section 552.103, you have not explained, nor is it apparent from the records submitted for our review, that litigation costs are at issue in the pending acquisition litigation. Instead, you assert that responding to this portion of the request would require segregating cost information from litigation case files. You claim that extracting this information is an unreasonable burden on the commission because the information does not exist in any uniform record, but instead is entwined with scattered confidential records. Nevertheless, the act does not allow a custodian of records to consider the method of supplying the requested information in determining whether such information should be disclosed. Attorney General Opinion JM-672 (1987) (citing *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977)).[2] Additionally, where a governmental body raises a valid exception,[3] and some material is disclosable, the governmental body must extract the information which *is* disclosable. Open Records Decision No. 353 (1982). While we understand the difficulty of the task with which the commission is faced, a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990). Because you have failed to claim any valid exception to disclosure, the information is presumed to

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[1]As we have disposed of the issue under section 552.105, we need not address your claim that 552.103 applies to the information.

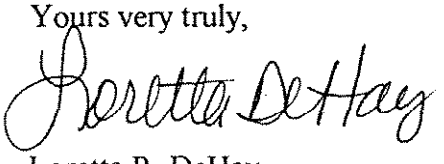
[2]We note, however, that the act allows that where access to information is impracticable because the requested records require deletion of confidential information, the requestor must bear the cost of production of records. Open Records Decision No. 488 (1988) at 7-8.

[3]We do not address the claim that the litigation files are confidential, as they are not at issue under this open records request.

be public. *See* Attorney General Opinion JM-672 (1987); Open Records Decision No. 325 (1982). Therefore, you must release the information relating to the costs of litigation.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/LMM/ch

Ref.: ID# 33103

Enclosures: Submitted documents

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Staff Writer
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(w/o enclosures)