



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 30, 1997

Ms. Judith Doran  
Open Records Coordinator  
Texas Parks and Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744

OR97-1260

Dear Ms. Doran:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code.<sup>1</sup> Your request was assigned ID# 106110.

The Texas Parks and Wildlife Department (the "department") received a request for a variety of information "regarding the Chaparral Rails to Trail[s] between Farmersville, . . . and the outskirts of Paris, Texas." You state that some of the information included in the request is exempted from public disclosure.<sup>2</sup> You claim that the submitted information is exempted from disclosure under sections 552.101 and 552.105 of the Government Code.<sup>3</sup> You have submitted samples of the information requested. We have considered the exceptions you claimed and have reviewed the sample documents.

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<sup>1</sup>Initially, we must note that we were somewhat bewildered by some of the information in your request for a ruling. For example, in your letter, dated March 12, 1997, you asserted that you received the requestor's letter on January 21, 1997, which would have resulted in a ten day violation; however, the letter from the requestor was actually dated February 26, 1997. Additionally, your brief to our office was dated December 10, 1996. We can only conclude that these mistakes were the result of clerical or typographical errors.

<sup>2</sup>We assume that you have or will release the remainder of the requested information, for which no exceptions are applicable.

<sup>3</sup>Although the department originally also claimed that the requested information is exempted from disclosure under sections 552.107 and 552.108 of the Government Code, the department did not offer any arguments as to why these exceptions would apply to any of the requested information. The Government Code places on the custodian of records the burden of proving that records are exempted from public disclosure. Attorney General Opinion H-436 (1974). Therefore, we consider these exceptions waived. Gov't Code §§ 552.301, 552.303.

You have submitted one exhibit, labeled as Attachment IV, that you contend is excepted from disclosure pursuant to a common-law and constitutional right of privacy under section 552.101 of the Government Code. As for this claimed exception, after reviewing the submitted record, we did not find any information that was protected by privacy or any provision of law in conjunction with section 552.101. Therefore, the department cannot withhold any of the information submitted as Attachment IV under section 552.101 of the Government Code.

We next consider your remaining exception to disclosure. You have submitted two exhibits, labeled as Attachments II and III, that you seek to withhold from required public disclosure pursuant to section 552.105 of the Government Code. This section excepts from disclosure information relating to:

- (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 contract for the property.

This exception is designed to protect a governmental body's planning and negotiating position in transactions involving the purchase of real or personal property for a public purpose. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Whether a particular appraisal report 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 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).

You have submitted for our review sample appraisal and description documents for certain tracts under consideration by the department. You contend that "[a]ll documents in the attachments show property which a political body has proposed to buy for use for public purposes." You further claim that "[t]here has been no formal award of contract on any of the property." We believe the information you submitted consists of "information relating to . . . appraisals or purchase of real or personal property for a public purpose." Accordingly, we conclude that the department may withhold the appraisal, Attachment II, and description reports, Attachment III, from required public disclosure under section 552.105 of the Government Code. However, once the transaction has been completed, the appraisal reports and related information may no longer be withheld, unless excepted from disclosure by some other provision of the Open Records Act. Open Records Decision No. 310 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision.<sup>4</sup> 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,



Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref.: ID# 106110

Enclosures: Submitted documents

cc: Mr. Lewis Dodd  
Hill Country Heritage Association  
729 South Washington  
Fredericksburg, Texas 78624  
(w/o enclosures)

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<sup>4</sup>In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

