



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 2, 1998

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

OR98-0868

Dear Mr. Pounders:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114000.

The City of Dallas (the "city") received a request for a variety of information related to the proposed downtown sports and entertainment facility. You indicate that the requested information generated through November 14, 1997 has been ruled on in previous opinions from this office, including Open Records Letter Nos. 96-0599, 96-0723, 96-1826, 97-0145, 97-1874, 97-2235, 98-0339 and 98-0511. The city should rely on these rulings with respect to release of the information covered by those requests and the current one. You have, however, submitted representative samples of the information responsive to the pending request which was generated after November 14, 1997, and assert that portions of the requested information are excepted from required public disclosure based on Government Code sections 552.104, 552.105 and 552.111. We will therefore address your newly raised arguments and review the submitted information.<sup>1</sup>

Section 552.104 protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Section 552.104 is generally invoked to except

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<sup>1</sup>In reaching our conclusion here, 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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

information relating to competitive bidding situations involving specific commercial or contractual matters from required public disclosure. Open Records Decision No. 463 (1987). Governmental bodies may withhold bid information while governmental officials are in the process of evaluating the proposals and asking competitors to clarify their bids. Open Records Decision No. 170 (1977). Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect. Open Records Decision Nos. 306 (1982), 184 (1978).

You state that the city has not yet determined in what manner it will finance the arena project, or with which financial institutions it will contract, and that release of the information in Exhibit B would give a competitive advantage to financial institutions that have yet to submit proposals to the city for arena-related financing. Upon review of the information contained in Exhibits B, we conclude you may withhold this information from disclosure under section 552.104 at this time.

Section 552.105 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 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 Nos. 564 (1990), 357 (1982), 310 (1982). Information excepted under section 552.105 which pertains to such negotiations may be excepted so long as the transaction is not complete. Open Records Decision No. 310 (1982). Because this exception extends to "information pertaining to" the location, appraisals, and purchase price of property, it may protect more than a specific appraisal report prepared for a specific piece of property. Open Records Decision No. 564 (1990) at 2. For example, this office has concluded that appraisal information about parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body's negotiating position with respect to the remaining parcels. *Id.* A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" Open Records Decision No. 357 (1982) at 3 (quoting Open Records Decision No. 222 (1979)).

When a governmental body has made a good faith determination that the release of information would damage its negotiating position with respect to a property transaction, the attorney general, in issuing a ruling under section 552.306, will accept that determination unless the records or other information show the contrary as a matter of law. *See Open Records Decision No. 564 (1990).* Upon review of the information you seek to withhold under section 552.105, we conclude that you may withhold the information in Exhibits C, D, E, F, G and H under that section. As we resolve your request for a decision concerning the information in these exhibits under section 552.105, we need not address your arguments under section 552.111.

We are resolving this matter with this 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 may 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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 114000

Enclosures: Marked documents

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(w/o enclosures)