



November 9, 2001

Mr. Stephen Whitworth
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2001-5184

Dear Mr. Whitworth:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154834.

The City of San Antonio (the "city") received two requests for information from the same requestor. The first request seeks the following information:

1. A list of the members of the Conservation Advisory Board.
2. A list of the properties that Bexar Land Trust brokered for the city.
3. As requested on August 16: The document(s) that lists the properties on each tier of preference.

You state that the city has released the information responsive to the first two categories of this request. You claim, however, that the information responsive to the third category of information is excepted from disclosure under section 552.105 of the Government Code. The second request seeks "all documents associated with city payments to Bexar Land Trust and SARA (invoices, backup receipts and third-party bills, cover letters, etc.)." You state that the city has released some of the information responsive to this request. You claim, however, that some of the information responsive to this second request is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

¹ You indicate that Exhibits E and F consist of representative samples of the information responsive to the second request. 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.

Initially, we address the requestor's contention that he previously requested the information sought in the third category of his first request on August 16, 2001. Our review of the requestor's August 16, 2001 e-mail message indicates that, although the requestor did inquire as to whether "a document(s) that lists the properties in each tier" exists, the requestor did not actually request such information. The requestor did not request this information until August 30, 2001.

Next, we note that the documents in Exhibits E and F are subject to section 552.022 of the Government Code. Section 552.022 provides, in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

....

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(3) & (16). The city must release any requested information that falls within subsections (3) and (16) of section 552.022(a), unless that information is expressly confidential under other law. Section 552.105 of the Government Code is a discretionary exception under the Public Information Act and does not constitute "other law" for purposes of section 552.022. Open Records Decision No. 564 (1990) (governmental body may waive statutory predecessor to section 552.105). Therefore, the city may not withhold the information in Exhibits E and F from disclosure under section 552.105 of the Government Code. As you have raised no other exception with respect to this information, the city must release the information in Exhibits E and F.

We next address your claimed exception for the submitted information that is not subject to section 552.022. Section 552.105 of the Government Code 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 that pertains to such negotiations may be excepted so long as the transaction is not complete. Open Records Decision No. 310 (1982). This office has concluded that information about specific 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. Open Records Decision No. 564 at 2 (1990). 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 at 3 (1982) (quoting Open Records Decision No. 222 (1979)). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiation position in regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body's good faith determination in this regard, unless the contrary is clearly shown as a matter of law. Open Records Decision No. 564 (1990).

You state that the document submitted in Exhibit C relates to an ongoing property acquisition program of the city, which is commonly referred to as Proposition 3. You indicate that this document lists all properties within the Proposition 3 purchase area along with the relative importance the city has placed on the purchase of each individual piece of property. You state that "the [c]ity's future negotiating position with these property owners would be harmed if this information were to become public." Based on your representations and our careful review of the document submitted as Exhibit C, we believe that you have demonstrated the applicability of section 552.105 to this document. Thus, the city may withhold Exhibit C under section 552.105.

To summarize, we conclude that: (1) the city may withhold the information in Exhibit C under section 552.105; and (2) the remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

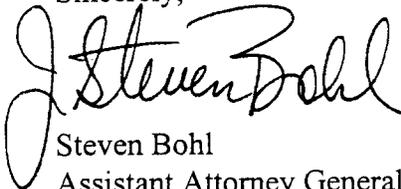
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Steven Bohl
Assistant Attorney General
Open Records Division

JSB/KAE/sdk

Ref: ID# 154634

Enc: Submitted documents

c: Mr. Roddy Stinson
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