



March 4, 2002

Mr. John Feldt  
Assistant District Attorney  
Denton County  
P.O. Box 2850  
Denton, Texas 76202

OR2002-1055

Dear Mr. Feldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159344.

The Denton County Criminal District Attorney's Office Civil Division (the "district attorney") received a request for information concerning improvements to a specified road. You inform us that much of the responsive information has been released to the requestor, but you claim that requested information concerning "all right-of-way matters" is excepted from disclosure under sections 552.105 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 was designed to protect a governmental body's planning and negotiating position with respect to particular transactions. Open Records Decision No. 564 at 2 (1990). This exception protects information relating to the location, appraisals, and purchase price of property only until the transaction is either completed or aborted. Open Records Decision

Nos. 357 at 3 (1982), 310 at 2 (1982). In this instance, you inform us that the submitted information pertains to active right-of-way acquisition negotiations between Denton County and private landowners. You further inform us that there has been no public announcement of the location or possible purchase price of the real property discussed in the submitted documents. Finally, you contend that release of the submitted information would damage Denton County's position in negotiations to acquire the right-of-way. Based on your representations, we agree that section 552.105 is applicable and that the district attorney may withhold the submitted information under that provision.<sup>1</sup>

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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

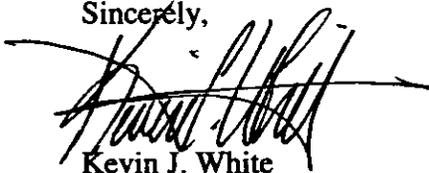
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<sup>1</sup>Because section 552.105 is dispositive, we need not address your other claims.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in black ink, appearing to read "Kevin J. White", is written over a horizontal line.

Kevin J. White  
Assistant Attorney General  
Open Records Division

KJW/seg

Ref: ID# 159344

Enc. Submitted documents

c: Mr. Reese Dunklin  
Mr. Brooks Egerton  
The Dallas Morning News  
P.O. Box 655237  
Dallas, Texas 75265  
(w/o enclosures)