



June 5, 2002

Mr. Gordon Bowman  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2002-3055

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163869.

The Travis County Attorney's Office (the "county") received a request for "[a]ll documents pertaining to the recent Austin Ice Bats amendments to current lease." You state that you are releasing most of the requested information but claim that the information you have submitted to this office is excepted from disclosure under sections 552.104, 552.105, and 552.131 of the Government Code. In addition, you assert that release of the submitted documents may implicate a third party's proprietary rights and have notified the interested third party—the Austin Ice Bats (the "Ice Bats")—pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered all claimed exceptions and reviewed the submitted information.

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.

Gov't Code § 552.105. Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. *See* Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). This office has held that section 552.105 applies to leases as well as purchases of real estate. *See* Open Records Decision No. 348 (1982). Information excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted so long as the transaction relating to those negotiations is not complete. *See* Open Records Decision No. 310 (1982). 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. *See* Open Records Decision No. 564 (1990).

You state that the county believes that release of the submitted information "would jeopardize the County's ability to effectively negotiate for the modification of the lease in question." Based on our review of your arguments and the submitted information, we find that section 552.105 is applicable in this instance. Accordingly, we conclude that the department may withhold the submitted information from disclosure at this time pursuant to section 552.105 of the Government Code. As we are able to make this determination, we need not address your other claimed exceptions.

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

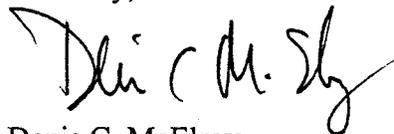
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The 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).

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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/sdk

Ref: ID# 163869

Enc. Submitted documents

c: Mr. Jack I. Hirschfield  
KTBC-Fox 7  
119 East 10<sup>th</sup> Street  
Austin, Texas 78701  
(w/o enclosures)

Mr. Charles Newman  
General Manager/Business Operations  
Austin Ice Bats  
7311 Decker Lane  
Austin, Texas 78724  
(w/o enclosures)