



August 2, 2002

Mr. Larry W. Wilshire  
Brown, Herman, Dean,  
Wiseman, Liser & Hart  
306 West 7<sup>th</sup> Street, Suite 200  
Fort Worth, Texas 76102-4905

OR20Q2-4245

Dear Mr. Wilshire:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166560.

The Housing Authority of the City of Fort Worth (the "authority"), which you represent, received three requests for information pertaining to the Stonegate Villas apartment complex. You claim a portion of the requested information is excepted from disclosure under section 552.105 of the Government Code. In addition, pursuant to section 552.305, you notified representatives of SSR WM Texas L.P. ("SSR") of the request for information and invited SSR to submit arguments to this office as to why the information at issue should not be released.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

---

<sup>1</sup>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 in Public Information Act in certain circumstances).

<sup>2</sup>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.

We begin by noting that SSR did not provide arguments to this office. Therefore, we have no basis on which to conclude that the information in submitted Exhibit D is excepted from disclosure under section 552.110. However, we note that the information in Exhibit D contains an e-mail address that is excepted from disclosure under section 552.137 of the Government Code. Section 552.137 requires a governmental body to withhold e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public have affirmatively consented to their release. As there is no indication that the member of the public whose e-mail address is at issue here has consented to release, pursuant to section 552.137 of the Government Code, the authority must not release the e-mail address we have marked in Exhibit D (see orange flag).

Exhibit D also contains account numbers that are subject to section 552.136 of the Government Code. Section 552.136 makes certain access device numbers confidential and provides in pertinent part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Accordingly, the authority must withhold the account numbers that we have marked pursuant to section 552.136 of the Government Code (see blue flags). The remainder of the information in Exhibit D must be released to the requestors who requested this information.

We will next address your argument under section 552.105 for the information in submitted Exhibit F. 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.

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. Open Records Decision Nos. 564 (1990), 357 (1982), 222 (1979). 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 Nos. 310 (1982), 265 (1981). Because this exception extends to "information relating 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. ORD 564 at 2. For example, we have 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.* We have also held that section 552.105 applies to leases as well as purchases of real estate. Open Records Decision No. 348 (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.'" ORD 357 at 3 (quoting ORD 222). When a governmental body has made a good faith determination that the release of information would damage its negotiating position with respect to a real estate transaction, the attorney general will accept that determination unless the records or other information show the contrary as a matter of law. ORD 564.

The authority states that it "has in good faith determined that the information [at issue], if publicly released would impair its planning and negotiation position. The [authority] is in the process of replacing 268 public housing units. Construction has begun to replace approximately 54 units, leaving 214 units still to be replaced." On the basis of these assertions and our review of the submitted information, we find that section 552.105 is applicable in this instance. The authority may therefore withhold the information in submitted Exhibit F under section 552.105.

To summarize, the information in submitted Exhibit D must be released to the requestors who requested this information, with the exception of the e-mail address we have marked, which must be withheld under section 552.137, and the account numbers we have marked, which must be withheld under section 552.136. The information in submitted Exhibit F may be withheld under section 552.105.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

Ref: ID# 166560

Enc. Submitted documents

c: Mr. Greg S. Gober  
2553 Stadium Drive  
Fort Worth, Texas 76109  
(w/o enclosures)

General Counsel  
SSR WM Texas L.P.  
c/o SSR Realty Advisors, Inc.  
One California Street  
Suite 1400  
San Francisco, California 94111  
(w/o enclosures)

Mr. Scott Neely  
President  
Wilderness Enterprises, Inc.  
5722 Forest Bend Drive, Suite 100  
Arlington, Texas 76017  
(w/o enclosures)

Mr. Elliott S. Garsek  
Law Offices of Barlow & Garsek, P.C.  
3815 Lisbon Street  
Fort Worth, Texas 76107  
(w/o enclosures)