



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 5, 2003

Mr. Hans P. Graff  
Assistant General Counsel  
Houston Independent School District  
3830 Richmond Avenue  
Houston, Texas 77027-5838

OR2003-2987

Dear Mr. Graff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180410.

The Houston Independent School District (the "district") received a request for four categories of information related to the relocation of the district's headquarters and the construction of a new district headquarters building. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.105 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We first note that some of the submitted documents fall within the scope of section 552.022 of the Government Code. Section 552.022 provides in relevant part that:

*the following categories of information are public information and are 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.

Gov't Code § 552.022(a)(3) (emphasis added). Therefore, the information we have marked as being subject to section 552.022(a)(3) must be released to the requestor unless it is confidential under other law. Section 552.105 is a discretionary exception to disclosure that protects the interests of governmental bodies and may be waived. As such, this exception does not constitute other law that makes information expressly confidential for purposes of section 552.022. See Open Records Decision Nos. 665 at 2 n.5 (2000), 522 at 4 (1989). However, you argue that the information is excepted under section 552.101 in conjunction

with section 551.072 of the Government Code. As this statute may constitute "other law" for purposes of section 552.022, we will address your arguments under this statute for the information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that section 551.072 of the Government Code makes the submitted information confidential. Section 551.072 provides:

A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

Gov't Code § 551.072. Section 551.072 authorizes governmental bodies to hold closed meetings related to property transactions. This provision does not address the confidentiality of records. The fact that a subject was discussed in an executive session does not make information related to that discussion confidential. Open Records Decision Nos. 605 (1992), 485 (1987). Because section 551.072 is not a confidentiality provision, we conclude that the information subject to section 552.022(a)(3) must be released to the requestor.

We now consider your claim under section 552.105 in relation to the remaining 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.

Under section 552.105, 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)). 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). 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 advise that the district is seeking to acquire additional parking and green space near one of its schools, and is also currently negotiating the sale of real property in order to relocate the main administrative complex. You state that no contracts have been entered into for any of the property at issue. Further, you contend that premature release of the information at issue may hamper the district's negotiating position in attempting to sell the property, as well as its ability to acquire the most advantageous property configuration for the relocation. Based on your arguments and our review of the information not subject to section 552.022(a)(3), we conclude that you have demonstrated the applicability of section 552.105 to some of this information. This information, which we have marked, may be withheld pursuant to section 552.105. However, you have not demonstrated that any of the remaining information relates either to the location of property for a public purpose prior to public announcement of the project, or to appraisals or purchase price of property for a public purpose prior to the award of contracts for the property. Consequently, this information may not be withheld under section 552.105.

However, the remaining information contains private e-mail addresses that must be withheld under section 552.137 of the Government Code. Section 552.137 requires a governmental body to withhold an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body, unless the member of the public has affirmatively consented to its release.<sup>1</sup> See Gov't Code § 552.137(a), (b). You do not inform us that a member of the public has affirmatively consented to the release of any of the private e-mail addresses contained in the submitted materials. Therefore, the types of e-mail addresses we have marked must be withheld under section 552.137.

In summary, the district may withhold the information we have marked pursuant to section 552.105, and must withhold the information we have marked pursuant to section 552.137. The remaining requested 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

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<sup>1</sup> Section 552.137 does not apply to a general e-mail address of a business or to a government employee's work e-mail address.

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 Pub. 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,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 180410

Enc. Submitted documents

c: Mr. Thomas P. Gegeny, II  
1205 Banks St. # 1  
Houston, Texas 77006  
(w/o enclosures)