



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 24, 2003

Mr. Anthony S. Corbett  
Freeman & Corbett, L.L.P.  
2304 Hancock, Suite 6  
Austin, Texas 78756

OR2003-4329

Dear Mr. Corbett:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 183188.

The Brushy Creek Municipal Utility District (the "District") received a request for information concerning "Reference Item X (Agreement for Conducting Land Appraisal) on the Agenda for the Board of Directors Meeting of 27 March 2003." You assert some of the requested information is excepted from disclosure under section 552.105 of the Government Code. We have reviewed the information you submitted and we have considered the exception you claim.

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). 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).

In this instance, you state the submitted information “identifies the name[s] of property owners and/or location[s] of properties being considered by the District for acquisition (easement or fee) for its long-term water project[.]” You contend release of the submitted information “would severely harm the District by compromising its negotiation position in transactions with landowners for acquisition and purchase of easement and fee interests.” Further, you express concern that “disclosure of the addresses and names on the proposal could significantly increase the price to be paid by the District for water pipeline easement or fee sites.” Based on your representations and our review of the submitted information, we conclude the District may withhold the names of the property owners and the locations of the properties based on section 552.105 of the Government Code.

Finally, the submitted information contains an e-mail address subject to section 552.137 of the Government Code. Specifically, section 552.137 states the following:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov’t Code § 552.137. This provision makes certain e-mail addresses confidential. *See* Gov’t Code § 552.137. You do not inform us that the member of the public has affirmatively consented to the release of the e-mail address contained in the submitted materials. Therefore, the District must withhold the e-mail address of the member of the public, which we have marked, under section 552.137 of the Government Code.

In summary, the District may withhold the property owners’ names and property locations under section 552.105 of the Government Code. The District must withhold the e-mail address we have marked under section 552.137 of the Government Code. The District must release the remainder of the submitted information as it claims no other applicable exceptions to disclosure.

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 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,

A handwritten signature in black ink that reads "Christen Sorrell". The signature is written in a cursive, flowing style.

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 183188

Enc: Submitted documents

c: Mr. John C. McLemore  
8400 Cornerwood Drive  
Austin, Texas 78717  
(w/o enclosures)