



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2005

Mr. Bob Ramirez  
Escamilla & Poneck, Inc.  
100 Travis Park Plaza Building  
711 Navarro  
San Antonio, TX 78205

OR2005-01173

Dear Mr. Ramirez:

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# 218441.

The San Antonio Independent School District (the "district"), which you represent, received a request for information related to the proposed expansion of David Crockett Elementary School, including the "agreed upon final sales price for the homes directly north and south" of the requestor's house.<sup>1</sup> The requestor later made an additional request for the appraisal information related to those specific houses. You state that you have released some of the requested information, but you claim that the submitted information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in pertinent part, as follows:

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<sup>1</sup>You state that none of the relevant tracts of land had been acquired at the time of the request. The Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information contains completed appraisal reports made for the district, which are made expressly public by section 552.022(a)(1) and must be released unless expressly made confidential under other law or excepted under section 552.108 of the Government Code. You do not claim that section 552.108 applies to these documents and instead assert that they are protected by section 552.105. This section constitutes a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision No. 564 (1990) (governmental body may waive statutory predecessor to Gov't Code § 552.105).<sup>2</sup> Accordingly, the district may not withhold the completed appraisal reports under section 552.105. As you raise no other exceptions to disclosure for this information, you must release it to the requestor.

We will next consider your argument under section 552.105 of the Government Code for the remaining submitted information, which is not subject to section 552.022. 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). A governmental

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<sup>2</sup>Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, Gov't Code § 552.107(1)), 551 (1990) (statutory predecessor to Gov't Code § 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

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 district states that the remaining submitted information is excepted from disclosure under section 552.105 because release will harm the district’s position in negotiations of a purchase price for the requestor’s property as it reveals the district’s expenditure limits to acquire the properties. We agree that release of this information would damage the district’s negotiating position with respect to the proposed real estate transaction. Therefore, the district may withhold under section 552.105 of the Government Code the remaining submitted information, which we have marked. The submitted appraisal reports 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 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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, appearing to read "Elizabeth A. Stephens". The signature is fluid and cursive, with the first name being the most prominent.

Elizabeth A. Stephens  
Assistant Attorney General  
Open Records Division

EAS/krl

Ref: ID#218441

Enc. Submitted documents

c: Mr. Alfonso P. Garza  
23 Northwood  
Laredo, TX 78041  
(w/o enclosures)