



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2005

Ms. Jeanene McIntyre
Assistant City Attorney
City of Arlington
P. O. Box 90231
Arlington, Texas 76004-3231

OR2005-09762

Dear Ms. McIntyre:

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# 235038.

The City of Arlington (the "city") received a request for the resolution passed by the city to purchase a named property and a signed appraisal report used to determine the purchase price of the named property. You state that you have released some of the requested information, but claim that the submitted information is excepted from disclosure under section 552.105 of the Government Code. You have submitted information which you contend is a representative sample of the information responsive to this request. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the representative sample submitted by you does not include the requested appraisal report. You have only submitted a copy of the summary report which references an accompanying complete appraisal report. This opinion applies only to the information represented in the sample supplied by you for review. As you have not submitted the accompanying complete appraisal report for our review, we assume you have released it to the extent that it existed on the date the city received this request. If you have not released the requested appraisal report referenced in the submitted summary report, you must release it to the requestor at this time. *See Gov't Code §§ 552.301(a), .302.*¹

¹We note that a completed appraisal report is subject to disclosure pursuant to section 552.022(a)(1) of the Government Code. *See Gov't Code § 552.022(a)(1)* (providing that completed report, audit, evaluation, or investigation made of, for, or by governmental body is not excepted from disclosure unless it is expressly confidential under other law or excepted from disclosure under section 552.108). Section 552.105 is a discretionary exception to disclosure and is not other law for the purpose of section 552.022. Open Records Decision No. 564 (1990) (governmental body may waive statutory predecessor to section 552.105).

We now address your arguments for the 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.

Gov't Code § 552.105. This provision 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). Information excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted so long as the transaction 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. Open Records Decision No. 564 (1990).

You claim that the submitted information is excepted from disclosure under section 552.105 because its release may harm the city's ability to negotiate successfully with respect to other parcels of land to be acquired for a stadium complex for which the city is currently negotiating. You state that the city is currently involved in the land acquisition phase of the stadium project and is in the process of making offers to purchase land and contracting to purchase land. You further state that negotiations with most of the owners of the appraised properties have been initiated, and formal contracts for some, but not all, of the appraised properties have been awarded. Upon review, we find that the city has made a good faith determination that the submitted information relates to the appraisal or purchase price of real property that the city intends to purchase or has already purchased for the stadium project. *See* Open Records Decision No. 564 (finding that the 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). Based on your representations, we conclude that the city may withhold the submitted information under section 552.105 of the Government Code.

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); *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

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complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General 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. 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 cursive script, appearing to read "James Forrest".

James Forrest
Assistant Attorney General
Open Records Division

JF/jpa

Ref: ID# 235038

Enc. Submitted documents

c: Ms. Peggy Blackman Edward
1676 North Main Street
Jacksboro, Texas 76458