



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2006

Ms. A.S. McHugh
Assistant City Attorney
City of Cedar Park
1103 Cypress Creek Road, Suite 102
Cedar Park, Texas 78613

OR2006-01030

Dear Ms. McHugh:

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# 241275.

The City of Cedar Park (the "city"), which you represent, received a request for information related to the size and price paid "for each land parcel purchased for the Anderson Mills South Project road construction." You claim that the requested 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.

Initially, we note that the submitted Real Estate Summary Appraisal Report (the "report") is subject to section 552.022 of the Government Code. Under section 552.022(a)(1), a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Section 552.105 of the Government Code is a discretionary exception under the Act that 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 section 552.105). Therefore, the report may not be withheld under section 552.105.

Next, we address your claim under section 552.105 of the Government Code for the remaining information that 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. *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 relating to those negotiations 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. *See* Open Records Decision No. 564 (1990).

You state that the information at issue pertains to property that the city has already purchased for the referenced road construction project, but that the city "is in the process of acquiring several other tracts adjacent to and nearby the [previously] purchased tracts." You also state that the release of this information will harm the city's negotiation position with respect to the procurement of the remaining parcels to be purchased for the projects at issue. *See* Open Records Decision No. 564 (1990) (information regarding a parcel of property acquired in advance of adjacent or nearby parcels may be excepted from disclosure if the release would harm the governmental body's negotiating position with respect to the other parcels). Based on your representations and our review of the remaining information, we agree that section 552.105 is applicable to the information we have marked. Accordingly, we conclude that the city may withhold such information pursuant to section 552.105.

In summary, the information we have marked may be withheld under section 552.105 of the Government Code. The remaining submitted information must be released to the requestor.

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 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/er

Ref: ID# 241275

Enc. Submitted documents

c: Mr. Ron D. Gray
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