



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2006

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2006-01649

Dear Ms. Alexander:

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 # 245882.

The Texas Department of Transportation ("TxDOT") received a request for a list of names and addresses of residential and/or business property landowners whose property TxDOT will condemn on three specified segments of Highway 290 and Highway 71. 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 representative sample of information.¹

Section 552.105 of the Government Code excepts from disclosure information relating to:

- (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(2). 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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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).

You state that TxDOT “has made a good faith determination that the excepted information pertains to the appraisal or purchase price of real property that it intends to purchase.” You further state the information at issue “is related to the prices that must be paid for real and personal property.” Based on your representations and our review of the submitted documents, we agree that section 552.105 applies in this instance. Accordingly, TxDOT may withhold the information at issue 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 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 that reads "Shelli Egger".

Shelli Egger
Assistant Attorney General
Open Records Division

SE/er

Ref: ID# 245882

Enc. Submitted documents

c: Mr. Christopher Brown
6901 Raccoon Run
Austin, Texas 78736
(w/o enclosures)