



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2006

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

OR2006-06590

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# 252323.

The Texas Department of Transportation (the "department") received a request for 1) the names and addresses of property owners who will be affected by specified roadway projects, 2) a list of local governmental entities that are participating in the acquisition of property for each project, 3) a list of individuals or corporations who have requested to be notified of the progress of these projects, and 4) the most recent project timeline for each project. You claim that the submitted information is excepted from disclosure under section 552.105 of the Government Code.

Initially, we note that you have not submitted information responsive to categories two, three and four. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to these categories existed on the date that the department received the instant request, we assume that the department has released it to the requestor. If the department

has not released any such information, the department must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

We now turn to your arguments for the submitted information.¹ Section 552.105 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 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 the information at issue "pertains to the appraisal or purchase price of real property that [the department] intends to purchase." Further, we understand you to assert that the release of this information would harm the department's negotiations for purchase of the property in question. Based on our review of your arguments and information at issue, we find that section 552.105 is applicable in this instance. Accordingly, we conclude that the department may withhold the submitted information pursuant to 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

¹We assume that the submitted "representative sample" of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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).

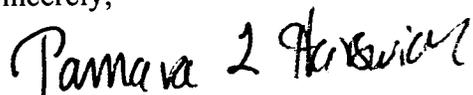
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/eb

Ref: ID# 252323

Enc. Submitted documents

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