



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2006

Mr. Richard M. Abernathy
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OR2006-09620

Dear Mr. Abernathy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 257282.

The Collin County Community College District (the "district"), which you represent, received a request for all documentation from the past two years regarding: 1.) the sale or other disposition of real property comprising or adjacent to the McKinney campus, 2.) planning for real property comprising or adjacent to the McKinney campus and development thereof under Chapter 380 of the Local Government Code, 3.) John Weber, John Weber & Company and/or affiliates, regarding real property comprising or adjacent to the McKinney campus, and 4.) the sale or other disposition of real property comprising or adjacent to the McKinney campus under Chapter 272 of the Local Government Code. You state that some of the responsive information will be released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.105 and 552.111 of the Government Code, as well as Texas Rule of Civil Procedure 192.5 and Texas Rule of Evidence 503. We have considered the exceptions you claim and reviewed the submitted information.¹

¹Although the district states that the submitted information is subject to section 552.022(a)(1) of the Government Code, we are unable to determine which, if any, of the submitted documents fall under this provision. Accordingly, we do not find that any of the submitted information falls under section 552.022(a)(1) and do not address that provision in this ruling.

You claim that the submitted information is excepted from disclosure under section 552.105 of the Government Code. This section 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 that is excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted from disclosure so long as the transaction relating to the negotiations is not complete. *See* Open Records Decision No. 310 (1982). Pursuant to section 552.105, 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. Thus, 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 submitted information "pertains to the potential sale and development" of the property identified in the instant request. Further, you assert that "the release of the submitted information will harm [the district's] negotiation position with respect to the potential sale and development of the subject property." Based on our review of the information at issue and your representations, we find that the submitted information may be withheld under section 552.105. Because our ruling on this issue is dispositive, we need not address your remaining arguments.

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,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/krl

Ref: ID# 257282

Enc. Submitted documents

c: Mr. David W. Richardson
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