



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 1, 2007

Mr. Ronald J. Bounds  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2007-05039

Dear Mr. Bounds:

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# 277944.

The City of Corpus Christi (the "city") received a request for all records relating to the transfer or sale of the Oso Municipal Golf Course to Texas A&M University and to the purchase of the Pharaohs Golf Course. You state that some of the requested information has been provided to the requestor. You claim that the remainder of the responsive information is excepted from disclosure under sections 552.105, 552.107, 552.111 and 552.137 of the Government Code, and rule 192.3 of the Texas Rules of Civil Procedure. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We begin by noting that one of the submitted documents is not responsive to the instant request for information, as it was created after the date that the city received the request. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release that information in response to this request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

Next, you inform us that some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2007-03095 (2007). With regard to information in the current request that is identical to the information previously requested and ruled upon by this office, we conclude that, as you inform us that the law, facts, and circumstances on which the prior ruling was based have not changed, the city may continue to rely on that ruling as a previous determination and withhold or release this information in accordance with Open Records Letter No. 2007-03095. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note that the submitted information contains a completed appraisal report that is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,” unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov’t Code § 552.022(a)(1). Sections 552.105 and 552.111 of the Government Code are discretionary exceptions to disclosure that protect a governmental body’s interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 564 (1990) (statutory predecessor to section 552.105 subject to waiver), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Because these sections are not other law that make information confidential for the purposes of section 552.022, the city may not withhold this report under either section 552.105 or section 552.111 of the Government Code.

Although you also seek to withhold the appraisal report under rule 192.3(e) of the Texas Rules of Civil Procedure, you failed to raise rule 192.3 as an exception to disclosure within the ten-business-day deadline prescribed by section 552.301 of the Government Code. *See* Gov’t Code §§ 552.301(b), 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.–Austin 1990, no writ). Rule 192.3(e) provides a privilege against discovery that a party entitled to claim the privilege may waive. *See* Tex. R. Evid. 511; *Jordan v. Court of Appeals*, 701 S.W.2d 644, 649 (Tex. 1985); *Arkla, Inc. v. Harris*, 846 S.W.2d 623, 630 (Tex. Civ. App.–Houston [14th Dist.] 1993, orig. proceeding); *Aetna Cas. & Surety Co. v. Blackmon*, 810 S.W.2d 438, 440 (Tex. Civ. App.–Corpus Christi 1991, writ denied). Accordingly, the city’s claim under rule 192.3(e) does not provide a compelling reason for non-disclosure for purposes of section 552.302. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982); *cf.* Open Records Decision No. 677 at 10 (2002) (claim of attorney work-product privilege under Tex. R. Civ. P. 192.5 does not provide compelling reason for non-disclosure if claim does not implicate third party rights). Consequently, the city may not withhold the appraisal report under rule 192.3.

You next assert that the remaining information is excepted under section 552.105 of the Government Code, which 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 respect to particular transactions. *See* Open Records Decision No. 564 at 2 (1990). This exception protects information relating to the location, appraisals, and purchase price of property only until the transaction is either completed or aborted. *See* Open Records Decision Nos. 357 at 3 (1982), 310 at 2 (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 (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 remaining submitted information relates to the city's planning and negotiation position regarding the real property identified in that information. You also state that there has been no public announcement regarding the city's eventual plans for the property. You assert that disclosure of the information in question could affect the city's potential future plans for the identified property. Based on your representations and our review of the information in question, we conclude that the city may withhold the remaining information under section 552.105 of the Government Code.

We note that some of the information to be released appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary, the city may continue to rely on Open Records Letter No. 2007-03095 as a previous determination for the information in the current request that is identical to the

information previously requested and ruled upon. The city must release the completed appraisal report pursuant to section 552.022(a)(1) of the Government Code; however, information that is protected by copyright must be released in accordance with copyright law. The remaining submitted information may be withheld under section 552.105 of the Government Code.<sup>1</sup>

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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<sup>1</sup>As our ruling is dispositive, we do not address your remaining claims.

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/mcf

Ref: ID# 277944

Enc. Submitted documents

c: Mr. Bobby J. Scott  
467 Palmetto Street  
Corpus Christi, Texas 78412  
(w/o enclosures)