



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2008

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2008-04101

Dear Ms. Sims:

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# 305899.

The City of Lubbock (the "city") received a request for information related to the taking of a named business. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.105 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information consists of completed appraisal reports. Section 552.022 of the Government Code provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

¹Although you raise sections 552.103, 552.107, 552.108, and 552.111 of the Government Code, you have not provided any arguments in support of these claims. Thus, the city has waived its claims under these exceptions. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general).

Gov't Code § 552.022(a)(1). We note that all information contained in a completed report is subject to section 552.022(a)(1). In this instance, because some of the submitted information contains completed appraisal reports, the reports at issue must be released under section 552.022(a)(1) unless they are expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. You claim that the reports at issue are excepted from disclosure under section 552.105 of the Government Code. However, section 552.105 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). Accordingly, the city may not withhold the reports at issue, which we have marked, under section 552.105. As you raise no other claims against disclosure for the reports at issue, they must be released.

Next, we will address your claims against disclosure for the remaining information. Section 552.101 of the Government Code excepts from disclosure information deemed confidential by law. Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." *Id.* § 551.104(c). Thus, such information cannot be released to a member of the public in response to an open records request.² *See* Open Records Decision No. 495 at 4 (1988). You seek to withhold a certified agenda of a closed meeting held by the city council. Based on your representations, we agree that the city must withhold the agenda under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

The city seeks to withhold the remaining information under section 552.105 of the Government Code. 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. We note that 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 that information is not complete. *See*

²We note that the city is not required to submit a certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code).

Open Records Decision No. 310 (1982). But the protection offered by section 552.105 is not limited solely to transactions not yet finalized. This office has concluded that information about specific parcels of land obtained in advance of other parcels to be acquired for the same project could be withheld where release of the information would harm the governmental body's negotiating position with respect to the remaining parcels. See ORD 564 at 2. 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.'" ORD 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 negotiating position with 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 ORD 564.

You state that the remaining information relates to the location of real or personal property that the city intends to purchase. You indicate that this information has not been released to the public. Further, you explain that the information at issue relates to a project that has not been announced and that the release of the information at issue may impair the city's negotiating and planning position with respect to the project at issue. Based on your representations and our review of the remaining information, we conclude that the city may withhold the remaining information under section 552.105 of the Government Code.

In summary, the city must release the appraisal reports pursuant to section 552.022(a)(1) of the Government Code. The city must withhold the agenda under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. The city may withhold the remaining information 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/eeg

Ref: ID# 305899

Enc. Submitted documents

c: Mr. Lamar Treadwell
1915 Broadway
Lubbock, Texas 79401
(w/o enclosures)