



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2009

Mr. John Knight
Deputy City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR2009-00883

Dear Mr. Knight:

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# 333911.

The City of Denton (the "city") received a request for (1) all communications between Rayzor Investments and the city regarding the location and purchase of land for a specified proposed water tank and (2) all communications between Hillwood Corporation and the city regarding all proposed water tank for a specified development. You inform us the city has no information responsive to part two of the request.¹ We understand the city has released some of the responsive information to the requestor. You claim the remaining information is excepted from disclosure under sections 552.105 and 552.128 of the Government Code.

¹We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.105 of the Government Code excepts from disclosure information that relates 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 regard to particular transactions. *See* Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information excepted from disclosure under section 552.105 pertaining to such negotiations may be excepted from disclosure so long as the transaction relating to that information is not complete. *See* ORD 310. 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.

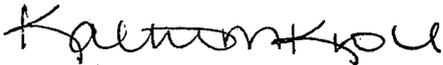
You state the submitted information consists of communications and negotiations between city officials and representatives of Rayzor Investments regarding the property at issue in the present request. You inform us the proposed contract between the city and Rayzor Investments has not yet been formally awarded by the city council. Based on your representations and our review, we conclude the city may withhold the submitted information under section 552.105 of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

This letter ruling is limited to the particular information 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 information or any other circumstances.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 333911

Enc. Submitted documents

c: Requestor
(w/o enclosures)