



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2009

Mr. Matthew C. G. Boyle
Boyle & Lowry, L.L.P.
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2009-10321

Dear Mr. Boyle:

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# 350184.

The City of Grapevine (the "city"), which you represent, received a request for information pertaining to real estate acquisition activities. You claim that the submitted information is exempted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) of the Government Code provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, or, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). The submitted appraisal reports, which we have marked, are subject to section 552.022(a)(1). Therefore, the city may only withhold this information if it is subject to section 552.108 or confidential under "other law." Section 552.105 is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision No. 564 (1990) (statutory predecessor to section 552.105 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the submitted appraisal reports may not be withheld under this exception. We note, however, that a portion of the information at issue is subject to

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city 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).

section 552.137 of the Government Code.² Section 552.137 is "other law" for the purposes of section 552.022(a)(1). Therefore, we will consider whether this exception is applicable to the information at issue. We will also consider the applicability of section 552.105 to the information that is not subject to section 552.022.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail address in the submitted information is not specifically excluded by section 552.137(c). The city must withhold this e-mail address, which we have marked, under section 552.137, unless the owner of the address has affirmatively consented to its release.

We now address your claim for the information not subject to 552.022 of the Government Code. Section 552.105 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.

Id. § 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 pertaining to such negotiations that is excepted from disclosure under section 552.105 may be withheld so long as the transaction relating to the negotiations is not complete. *See* ORD 310. Under 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.'" 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 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* ORD 564.

You explain that the city is in the process of exploring real estate options for a commuter rail station. You state that the remaining information identifies sites the city is considering acquiring as well as negotiations. You also state that no transaction has been finalized and the locations under consideration have not been publicly disclosed. You indicate that the city

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

has made a good-faith determination that the release of the information at issue would be detrimental to its negotiating position with respect to the acquisition of the properties. Based on your representations, we conclude that the city may withhold the information that is not subject to section 552.022 under section 552.105 of the Government Code.

We note that portions of the remaining information are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person 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 (1990).

In summary, the city may withhold the information not subject to section 552.022 of the Government Code under section 552.105 of the Government Code. With respect to the information subject to section 552.022 of the Government Code, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release. The remaining information must be released, but any copyrighted information may only be released in accordance with copyright law.

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.

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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 350184

Enc. Submitted documents

cc: Requestor
(w/o enclosures)