



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2009

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-10727

Dear Mr. Griffith:

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# 350950.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to the town's real estate acquisition activities, as well as a copy of property owners whose property is currently being acquired. You claim that the submitted information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, as follows:

(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:

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(5). A portion of the submitted documents consist of information used to estimate the need for or expenditure of public funds, which is subject to section 552.022(a)(5). Therefore, the town may only withhold this information if it is confidential under "other law." You seek to withhold the information at issue under section 552.105 of the Government Code. However, section 552.105 is discretionary in nature and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 564 (1990) (statutory predecessor to 552.105 subject to waiver). Thus, none of the information subject to section 552.022 may be withheld under this exception. As no other exception to disclosure of this information has been raised, we conclude that the information we have marked must be released pursuant to section 552.022 of the Government Code.

We now address your argument for the remaining information. Section 552.105(2) of the Government Code excepts from disclosure information relating to "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(2). "The opinions construing section [552.105], as well as the actual language of the exception, tie the provision to situations entailing the expenditure of public funds to acquire or use the subject property for public purposes in order to prevent speculation from inflating the price." Open Records Decision No. 590 at 4 (1991); *see* Open Records Decision No. 357 (1982). Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. *See* Open Records Decision No. 564 at 2 (1990), 357 at 3. Information protected by section 552.105 that pertains to such negotiations may be withheld for so long as the transaction is not complete. *See* Open Records Decision No. 310 at 2 (1982).

Moreover, this office also 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.'" Open Records Decision Nos. 357 at 3, 222 at 1-2 (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 at 2.

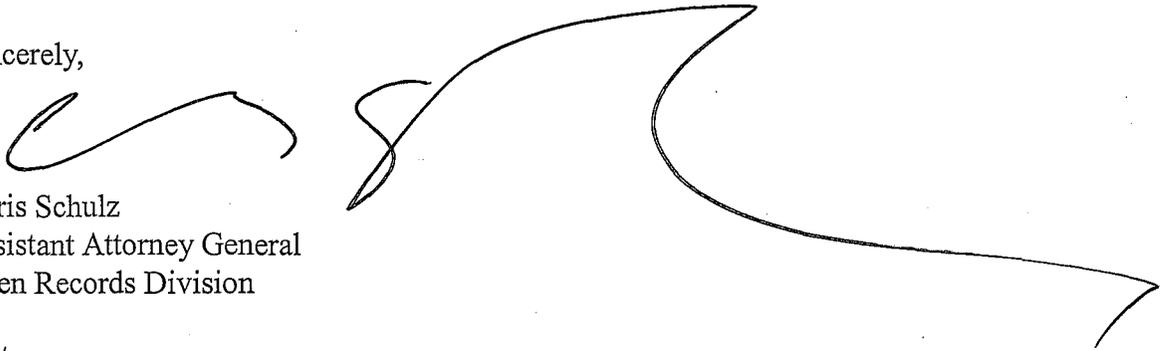
We understand you to state that the town has made a good-faith determination that the remaining information pertains to the appraisal or purchase price of real property that the town plans to include in its public works projects. Based on your representation, we conclude the town may withhold the remaining information under section 552.105(2) of the Government Code.

In summary, the town may withhold the information not subject to section 552.022(a)(5) of the Government Code under section 552.105(2) of the Government Code. The remaining information must be released.

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 350950

Enc. Submitted documents

cc: Requestor
(w/o enclosures)