



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2009

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2009-11235

Dear Ms. Alexander:

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# 351970.

The Texas Department of Transportation (the "department") received a request for four categories of information pertaining to properties with acquisition prices over \$100,000 that have been acquired within the last two years through eminent domain, involuntary conversion, or right of way. You state you have released some of the requested information to the requestor. 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 representative sample of information.¹

Section 552.105(2) of the Government Code, which 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

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Records Decision No. 590 at 4 (1991); *see also* 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.

You state that the department has made a good-faith determination that the submitted information pertains to the appraisal or purchase price of real property that it intends to purchase. Based on your representation, we conclude the department may withhold the submitted information under section 552.105(2) of the Government Code.

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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 351970

Enc. Submitted documents

c: Requestor
(w/o enclosures)