



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2009

Mr. Robert E. Hager  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2009-14827

Dear Mr. Hager:

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# 358771.

The City of the Colony (the "city"), which you represent, received a request for information relating to the "State offer to The City [for property] at Main St[.] and N. Colony Blvd." You state that some of the requested information either has been or will be released. You have submitted other responsive information that the city seeks to withhold under sections 552.101 and 552.105 of the Government Code. You also believe that the submitted information may implicate a third party's interests. You inform us that the interested party was notified of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

We first note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the third party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from the third party that was notified. Thus, as the third party

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<sup>1</sup>*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

has not demonstrated that any of the submitted information is proprietary for the purposes of the Act, the city may not withhold any of the information on that basis. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Next, we address the city's claim under section 552.105 of the Government Code. Section 552.105(2) 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 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 Nos. 564 at 2 (1990), 357 at 3 (1982). 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).

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.'" *See* 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 that the submitted information is related to a pending sale of city property to the State of Texas, acting through the Texas Department of Transportation ("TxDOT"). We note that the submitted information is a report of an appraisal of the property that was prepared for TxDOT. We understand that TxDOT provided its appraisal report to the city. You inform us that the sale of the property had yet to be closed on the date of the city's receipt of the instant request for information. You do not indicate, however, that the city has made a good-faith determination that release of the submitted appraisal report would impair the city's planning and negotiating position with regard to the pending sale. Moreover, you have not otherwise explained how or why public disclosure of an appraisal report that was prepared for TxDOT, as the purchaser of the property, would be detrimental to the planning and negotiating position of the city as the seller. We therefore conclude that the city may not withhold any of the submitted information under section 552.105 of the Government Code.

You also contend that the submitted appraisal report is excepted from disclosure under section 552.101 of the Government Code as information protected by copyright law.

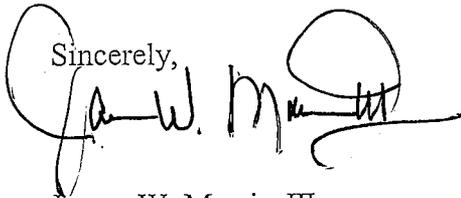
Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. We note that copyright law does not make information confidential for the purposes of section 552.101. *See* Open Records Decision No. 660 at 5 (1999). A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information 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 at 8-9 (1990).

In summary, the city must release the submitted information to the requestor. However, any information that is protected by copyright 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](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, toll free, at (888) 672-6787.

Sincerely,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 358771

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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