



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2009

Ms. Meredith Ladd
Brown & Hofmeister, L.L.P.
Attorney for City of Runaway Bay
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2009-15436

Dear Ms. Ladd:

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# 359798.

The City of Runaway Bay (the "city") received a request for information relating to the sale of specified city land and an audio copy and written transcript for three specified city council meetings. You state you are making the audio copy and any written transcripts of the August 18, 2009 and July 2009 meetings available to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.105 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the city has previously released a portion of the information that you now seek to withhold. In this instance, you have submitted information that is publicly available on a website.¹ The Act does not permit the selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2

¹The information is made available at the following website address:
http://www.century21sueanddenton.com/content/listdetail.html/80365628?proppos=0&prop_flag=1&propid=11116882&street=&city=&zipcode=&proptype=*&go=go&search_by=propid&formname=propid&startpos=1&endpos=10&ids=80365628&propertyCount=1

(1987). If information has been voluntarily released to any member of the public, then that same information may not subsequently be withheld from the public, unless its public disclosure is expressly prohibited by law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). You claim that this information is excepted from disclosure under section 552.105 of the Government Code. However, section 552.105 does not prohibit public disclosure of information. *See* Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 564 (1990) (statutory predecessor to 552.105 subject to waiver). Thus, the city may not now withhold this information, which we have marked for release, under section 552.105 of the Government Code. As you raise no other exception to disclosure of this information, it must be released to the requestor. However, we will address your arguments for the remaining information.

Section 552.105 of the Government Code excepts from disclosure information relating 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 that is excepted from disclosure under section 552.105 that pertains 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.

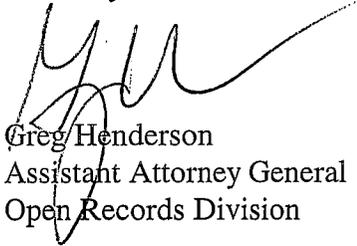
You state that the city has made a good-faith determination that the submitted information relates to real property that the city is offering for sale. You state that release of the information at issue would damage the city's negotiating position with respect to the sale of the property. Based on your representations and our review of the information at issue, we conclude that with the exception of the information we have marked for release, the city may withhold the remaining information under section 552.105 of the Government Code.²

²As 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.

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, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID# 359798

Enc. Submitted documents

c: Requestor
(w/o enclosures)