



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 16, 2011

Mr. Randy A. Stoneroad  
Deputy City Attorney  
City of Temple  
2 North Main Street, Suite 308  
Temple, Texas 76501

OR2011-06732

Dear Mr. Stoneroad:

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# 419848.

The City of Temple (the "city") received a request for information pertaining to a specified project. You contend the submitted information is not public information subject to disclosure under the Act. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.105 and 552.111 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

*Id.* § 552.002(a). Thus, virtually all of the information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.022(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Furthermore, the Act applies to information that a governmental body does not physically

possess, if the information is collected, assembled, or maintained for a governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987).

You state the submitted information pertains to a potential landfill expansion project that is still in its feasibility stage. You inform us that Waste Management, the operator of the city's landfill, submitted the information at issue to possibly suggest a location for the landfill. Thus, although this information may well be created or held by Waste Management for its own purposes, this information has also been provided to the city by Waste Management for the city's use. The submitted information is in the possession of the city, which is a governmental body as defined by section 552.003, and was collected, assembled, or maintained in connection with the transaction of the city's official business. Thus, such information constitutes public information under section 552.002(a). *Id.*; *see also* *Baytown Sun v. City of Mont Belvieu*, 145 S.W.3d 268, 271 (Tex. App.—Houston [14th Dist.] 2004, no pet. h.) (governmental body that was entitled to inspect books and records of contracting party had right to access to its payroll account records). We, therefore, conclude the information at issue is subject to the Act and must be released, unless it falls within the scope of an exception to disclosure. *See* Gov't Code §§ 552.002(a), .021.

We now turn to your argument under section 552.105 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 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. But, the protection offered by section 552.105 is not limited solely to transactions not yet finalized. This office 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.'" 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 the submitted information pertains to the potential acquisition of properties for a potential landfill expansion project. You indicate the city has made a good-faith determination that disclosure of this information would damage the city's planning and negotiating position with regard to the acquisition of properties needed for the development of this particular project. You also state that none of the potential sites for this project has been disclosed. Based on your representations and our review, we conclude the city may withhold the submitted information under section 552.105 of the Government Code.<sup>1</sup>

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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/eb

Ref: ID# 419848

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.