



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2012

Mr. Mark D. Kennedy
Chief, Civil Division
Hays County District Attorney's Office
217 South Stagecoach Trail, Suite 2057
San Marcos, Texas 78666

OR2012-03071

Dear Mr. Kennedy:

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# 446577.

The Hays County District Attorney's Office ("the district attorney's office") received a request for value appraisals or market value assessments for four specified properties.¹ You claim the requested information is excepted from disclosure under sections 552.104 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.²

We first note the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of completed appraisal

¹We note the requestor clarified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²This letter ruling assumes the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district attorney's office to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

reports which you state were made for Hays County (the “county”). You do not claim an exception to disclosure under section 552.108. Although you do claim an exception under section 552.105 of the Government Code, that section is a discretionary exception that protects a governmental body’s interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 564 (1990) (statutory predecessor to Gov’t Code § 552.105 subject to waiver). As such, section 552.105 does not made information confidential under the Act. Therefore, the district attorney’s office may not withhold any of the submitted information under section 552.105 of the Government Code. You also claim an exception under section 552.104 of the Government Code. We note information encompassed by section 552.022(a)(1) may be withheld under section 552.104. *See* Gov’t Code § 552.104(b) (information protected by Gov’t Code § 552.104 not subject to required public disclosure under Gov’t Code § 552.022(a)). Therefore, we will determine whether the district attorney’s office may withhold the submitted information under section 552.104.

Section 552.104 of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). The purpose of this exception is to protect a governmental body’s interests in competitive bidding and certain other competitive situations. *See* Open Records Decision No. 592 (1991) (construing statutory predecessor). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990).

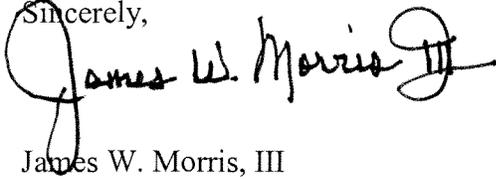
You explain county offices are being consolidated in a newly constructed government center. You inform us buildings that formerly housed county offices are being vacated and “are now going on the market for sale.” You state the submitted appraisal reports pertain to the properties to be sold. You explain the county “has been very careful not to disclose information that would give any interested purchaser of [c]ounty real property an unfair advantage over the other purchasers.” You assert disclosure of the submitted appraisal reports “would set a baseline for offers that would give a significant advantage to interested purchasers.” Thus, we understand you to contend release of the information at issue would be detrimental to the county’s “[c]onstitutional obligation to receive at least market value for the . . . properties” involved. Therefore, based on your representations, we conclude the district attorney’s office may withhold the submitted information under section 552.104 of the Government Code. We note this information may no longer be withheld on this basis once the sales contracts have been executed and are in effect. *See* ORD 541 at 5.

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a distinct "III" at the end.

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

JWM/em

Ref: ID# 446577

Enc: Submitted documents

c: Requestor
(w/o enclosures)