



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 29, 2012

Mr. Jason Martinson
Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2012-03159

Dear Mr. Martinson and Mr. Ramirez:

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# 447409.

The Lower Colorado River Authority (the "LCRA") received a request for information regarding landowners who have agreed to sell property to the LCRA for a specified project and landowners who have not yet agreed to sell property to the LCRA for that project including the landowner's name, address, phone number, number of acres the LCRA offered to purchase, offer price, and sale price. You state the landowners' names and addresses have been released to the requestor. You claim the submitted 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 submitted representative sample of information.¹

Initially, we note a portion of the submitted information is subject to section 552.022 of the Government Code, which provides, in relevant part, as follows:

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.

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information consists of a ledger of real estate purchase prices of completed transactions and offer prices of purchases still in negotiation. The purchase prices of completed transactions relate to the expenditure of LCRA funds and are subject to section 552.022(a)(3). You raise sections 552.104 and 552.105 as exceptions to disclosure. Section 552.105 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 564 (1990) (statutory predecessor to section 552.105 subject to waiver). Accordingly, the purchase prices may not be withheld on the basis of section 552.105 of the Government Code. However, because information subject to section 552.022(a)(3) may be withheld under section 552.104 of the Government Code, we will consider your claim under this section. *See* Gov't Code § 552.104(b) (information protected by section 552.104 not subject to required public disclosure under section 552.022(a)). We will also consider your claim under section 552.105 for the information not subject to section 552.022.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, in some situations, section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids).

You explain the LCRA is in the process of purchasing property rights and easements along a proposed transmission line, has finalized purchases from some landowners, and is still negotiating with other landowners along the proposed transmission line. You state release of the requested information would provide landowners still negotiating with the LCRA advantageous information that would allow those landowners to tailor their responses to the

purchase prices offered by the LCRA by revealing the price, terms, and conditions necessary to counter the LCRA's offer. Thus, you contend disclosure of the requested information would put the LCRA at a competitive disadvantage in its ongoing negotiations. Based on your representations and our review, we conclude the LCRA has demonstrated release of the requested information would harm its interests in a competitive situation. Accordingly, the LCRA may withhold the requested information under section 552.104 of the Government Code.²

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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 447409

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address your remaining argument under section 552.105 of the Government Code for the information not subject to section 552.022 of the Government Code.