



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 27, 2013

Mr. Christopher Garza  
Assistant District Attorney  
Brazoria County  
111 East Locust, Suite 408A  
Angleton, Texas 77515

OR2013-03310

Dear Mr. Garza:

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# 479997.

Brazoria County (the "county") received four requests from the same requestor for engineering maps, plans, and permits related to the acquisition of the following real property: (1) "5 acres being 40B1 & 40C of the ACH&B Railroad Survey"; (2) "26 parcels necessary for the CR 101 mobility project"; (3) "21 parcels [also] necessary for the CR 101 mobility project"; and (4) "16 parcels necessary for the CR 58/Lindell West [d]rainage [p]roject[.]" You claim the requested information is excepted from disclosure under sections 552.105 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We begin by noting that some of the submitted documents are not responsive to the instant request for information, as they were created after the date the county received the request. This ruling does not address the public availability of any information that is not responsive to the request, and the county need not release that information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

---

<sup>1</sup>We assume that the "representative samples" of records submitted to this office are 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.

We next note some of the responsive information falls within the scope of section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The responsive information contains completed reports that are subject to subsection 552.022(a)(1). The county must release the completed reports pursuant to subsection 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *See id.* § 552.022(a)(1). Although you seek to withhold that information under sections 552.105 and 552.111 of the Government Code, those sections are discretionary exceptions to disclosure that protect a 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 Gov't Code § 552.105 subject to waiver), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to Gov't Code § 552.111 subject to waiver).* As such, sections 552.105 and 552.111 do not make information confidential for purposes of section 552.022(a)(1). Thus, the completed reports may not be withheld under sections 552.105 or 552.111 of the Government Code. Therefore, as the county raises no other exception to disclosure of that information, the completed reports, which we have marked, must be released pursuant to section 552.022(a)(1) of the Government Code.

You seek to withhold the rest of the responsive information under section 552.105 of the Government Code, which excepts from disclosure information related 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, 357 (1982), 310 (1982).* Information pertaining to such negotiations that is excepted from disclosure under section 552.105 may be withheld so long as the transaction relating to the negotiations is not complete. *See ORD 310.* This office also has concluded 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.* Under section 552.105, 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 in regard to particular transactions is a question of fact. Thus, 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.

You state the remaining responsive information is related to planning for possible land acquisitions that have not yet been completed. You assert release of the information at issue will harm the county’s negotiating position. Based on your representations and our review, we conclude the county may withhold the rest of the responsive information under section 552.105 of the Government Code.<sup>2</sup>

In summary, the county (1) must release the completed reports, which we have marked, pursuant to section 552.022(a)(1) of the Government Code and (2) may withhold the rest of the responsive information under section 552.105 of the Government Code.

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

---

<sup>2</sup>As we are able to make this determination, we need not address the other exception you claim.

Ref: ID# 479997

Enc. Submitted documents

c: Requestor  
(w/o enclosures)