



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2014

Mr. Allan Meesey
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2014-11938

Dear Mr. Meesey:

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# 528737.

The Texas Department of Transportation (the "department") received a request for three categories of information pertaining to the I-35 East Phase I project in Denton County. You claim the submitted information is excepted from disclosure under sections 552.105 and 552.111 of the Government Code, and privileged under Texas Rule of Civil Procedure 192.3. We have considered your arguments and reviewed the submitted representative sample of information.¹

Initially, we note you have not submitted to this office information responsive to the second category of the request. Therefore, to the extent information responsive to this portion of the request exists, we assume the department has released it to the requestor. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If the department

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, we note a portion of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part the following:

(a) Without limiting the amount or kind of information that is public information under this chapter, the 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[.]

Id. § 552.022(a)(3). The submitted information contains a check that is subject to section 552.022(a)(3). Although you seek to withhold this information under section 552.105 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *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). Therefore, the department may not withhold the information subject to section 552.022 under section 552.105 of the Government Code. However, because section 552.136 of the Government Code makes information confidential, we will address its applicability to the information at issue.² We will also consider your arguments for the information not subject to section 552.022.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the department must withhold the routing number we have marked under section 552.136 of the Government Code.

You claim the information not subject to section 552.022 is excepted from disclosure under section 552.105 of the Government Code. Section 552.105 excepts from disclosure information relating to “appraisals or purchase price of real or personal property for a

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

public purpose prior to the formal award of contracts for the property.” *Id.* § 552.105(2). Section 552.105 is designed to protect a governmental body’s planning and negotiating position with respect to particular transactions. Open Records Decision Nos. 564 at 2 (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 department has made a good-faith determination that the information at issue relates to the appraisal or purchase price of real property the department intends to purchase. You explain the department still needs to purchase property in the same area, and release of the information at issue would harm the department’s negotiating position with respect to the acquisition of nearby property. Based on these representations and our review, we conclude the department may withhold the information not subject to section 552.022 under section 552.105 of the Government Code.³

In summary, the department must withhold the routing number we have marked under section 552.136 of the Government Code. The department may withhold the information not subject to section 552.022 under section 552.105 of the Government Code. The department must release the remaining information.

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.texasattorneygeneral.gov/open/>

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/tch

Ref: ID# 528737

Enc. Submitted documents

c: Requestor
(w/o enclosures)