



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1995

Ms. Evelyn Johnson
Acting Manager
Materials Management
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR95-802

Dear Ms. Johnson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33171.

The Capital Metropolitan Transportation Authority ("Capital Metro") received an open records request for a copy of the Carter-Burgess Investment Analysis Report prepared for Capital Metro. You contend that this report is excepted from required public disclosure pursuant to sections 552.105 and 552.104 of the Government Code. You have submitted for our review the requested report. You inform us that Carter & Burgess, Inc. was retained by Capital Metro to provide assistance in determining the feasibility of a potential purchase by Capital Metro of a segment of railroad right-of-way from the City of Austin (the "city"). You state that Capital Metro has discussed this matter with the city and intends to submit a bid for such a purchase. You contend that the requested report specifically pertains to Capital Metro's planning and negotiating position with respect to the potential purchase of the right-of-way. We note that the requestor submitted a letter to this office in response to Capital Metro's letter. The requestor, by his response letter, explains that it is his understanding that Capital Metro had already publicly announced that it intends to proceed with the acquisition of the right-of-way from the city. The requestor contends, therefore, that the report is not subject to any of the exceptions provided in chapter 552 of the Government Code.

Section 552.105 excepts from required public disclosure:

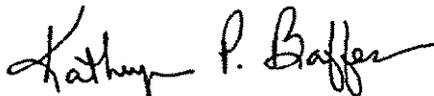
- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. Open Records Decision No. 564 (1990). We note that even though, as the requestor states in his response letter to this office, Capital Metro intends to pursue a purchase of the right-of-way, such a transaction has not been completed. Once the transaction is completed information that pertains to negotiations for the acquisition of real or personal property is no longer excepted from required public disclosure under section 552.105. See Open Records Decision No. 310 (1982).

After reviewing the information submitted, we agree with your determination that release of the requested information would damage Capital Metro's negotiating position with respect to its plan to acquire a right-of-way from the city. Moreover, after reviewing the report, we find nothing on its face that indicates that its release would not damage Capital Metro's negotiating position. Accordingly, Capital Metro may withhold the submitted report pursuant to section 552.105 of the Government Code. See Open Records Decision No. 564 (1990).

Since we conclude that the submitted report may be withheld pursuant to section 552.105, we do not address your argument urging that the report is excepted from disclosure pursuant to section 552.104 of the Government Code. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/KHG/rho

Ref: ID# 33171

Enclosures: Submitted documents

cc: Mr. Douglas Killough
7508 Lobelia Lane
Austin, Texas 78729
(w/o enclosures)