



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 27, 1996

Ms. Karen Gladney
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR96-1043

Dear Ms. Gladney:

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# 39902.

The City of Austin (the "city") has received a request for records relating to the Scattered Cooperative Infill Housing Project II (SCIP II). You have submitted representative samples of the requested documents for our review and claim that sections 552.101 and 552.105 of the Government Code except the records from required public disclosure.¹

We first address your assertion that section 552.105 of the Government Code excepts Exhibits B and C from required public disclosure. Section 552.105 excepts from disclosure information relating to:

¹In reaching our conclusion here, we assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Government Code § 552.301(b)(3) (governmental body may submit representative samples of information if voluminous amount of information was requested); see also Open Records Decisions 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.

(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 in transactions involving the purchase of real or personal property for a public purpose. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). This exception protects information relating to the location, appraisals, and purchase price of property as long as the transaction is not complete. Open Records Decision Nos. 357 (1982), 310 (1982). Section 552.105 may extend, however, to protect information about related parcels of land, even when some of the transactions are complete. Open Records Decision No. 564 (1990) at 2. For example, this office has concluded that appraisal information about parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body's negotiating position with respect to the remaining parcels. *Id.* 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.'" Open Records Decision No. 357 (1982) at 3 (quoting Open Records Decision No. 222 (1979)).

You advise us that the city is in the process of purchasing property within a common area as a part of SCIP II. Although some property has been acquired, the city continues to negotiate for other parcels of property. The city objects to releasing the names, addresses, and phone numbers of the owners or persons associated with property that has been or will be purchased. The city contends that this information would allow a person currently negotiating with the city to track down others who have completed negotiations and gain information to use in the current negotiations. The city also contends that the purchase price, amount of relocation assistance, and amount of moving expenses would provide a person currently negotiating with the city an undue advantage. This office will accept a governmental body's good faith determination that release of information protected under section 552.105 will damage its negotiating position, unless the records or other information show the contrary as a matter of law. Open Records Decision No. 564 (1990) at 2. We therefore conclude that the city may withhold under section 552.105 the names, addresses, phone numbers, purchase price, and amounts paid in relocation and moving expenses relating to and through the pendency of the SCIP II transactions. We have marked with brackets the information that the city may withhold under this exception.

You also contend that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by

judicial decision.” Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 373 (1983), this office found that absent a specific showing of legitimate public interest, certain financial information of an individual applying for a housing grant is confidential under common law privacy. Applying this holding in the situation at hand, the city must withhold from disclosure under section 552.101 of the Government Code all information indicating an individual’s source of income, including salary or other benefits, mortgage or rental payments, assets, and utility bills. We have marked with brackets and the notation “101” the information that the city must withhold under this exception.

Section 552.101 also encompasses information made confidential by statutes. The federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), makes confidential social security account numbers and “related records” that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security numbers were obtained or are maintained pursuant to any provision of law enacted on or after October 1, 1990, and are thus confidential. We note that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information, while section 552.353 imposes criminal penalties for the failure to release public information.

Finally, we note that in its April 5, 1996 letter to this office, the city states that because the information that it believes is excepted from disclosure is found throughout the requested files, “simply redacting the documents is not a cost-effective option for the city.” Chapter 552 of the Government Code, however, requires the city to release all requested public information that is not excepted from disclosure. This opinion only authorizes the city to withhold the specific information as discussed above, and the city must release all other requested public information. A governmental body may not refuse to comply with an open records request merely because it would be difficult to do so. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).² We note that a governmental body may charge for providing copies of requested public information. *See e.g.* Gov’t Code §§ 552.261, .262, *but c.f.* Gov’t Code § 552.271-272 (no charges or limited charges may be imposed if requester seeks inspection rather than copies of requested documents).

²Section 552.222(b) of the Government Code provides that if a large amount of information has been requested, the governmental body may discuss with the requester how the scope of a request might be narrowed. *See also* Open Records Decision Nos. 561 (1990), 563 (1990). A governmental body is required, however, to make a good faith effort to advise the requester of the types of documents available that may be responsive to the request. Open Records Decision Nos. 561 (1990), 563 (1990), 87 (1975).

We are resolving this matter with an 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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'RWS' followed by a stylized flourish.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/rho

Ref.: ID# 39902

Enclosures: Marked documents

cc: Mr. Alex De Marban
905 East 44th Street
Austin, Texas 78751
(w/o enclosures)