



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 9, 1996

Mr. Spencer L. Reid  
Acting General Counsel  
General Land Office  
Stephen F. Austin Building  
1700 North Congress Avenue  
Austin, Texas 78701-1495

OR96-1416

Dear Mr. Reid:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100022.

The General Land Office (the "GLO") received two requests for information regarding the proposed June 4, 1996, sale of State Parking Lot 19. You state that the GLO will provide a copy of the requested survey to one of the requestors. However, you claim that most of the requested information is excepted from disclosure under sections 552.104, 552.105 and 552.111 of the Government Code.<sup>1</sup> You have submitted samples of the requested information.<sup>2</sup> We have considered the exceptions you claimed and have reviewed the sample documents.

Section 552.104 excepts information that, if released, would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See Open Records Decision*

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<sup>1</sup>You claim that section 552.107 excepts some of the information requested by the second requestor. Here, section 552.107 and section 552.111 will encompass the same information. Therefore, as we address your arguments under section 552.111, we need not address your claimed exception under 552.107.

<sup>2</sup>In 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 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.

No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. See Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 (1987) at 2.

Here, you advise us that the sale of Lot 19 has not yet occurred. We believe that the GLO has met its burden of establishing specific harm to its interests in this particular situation. Therefore, the GLO may withhold from disclosure the items for which it has claimed a section 552.104 exception, specifically, the names and addresses on Exhibits A1-A3, B, C, and D, and the complete appraisal on the property.<sup>3</sup>

You also seek to withhold certain other requested documents from public disclosure pursuant to section 552.105 of the Government Code. Section 552.105 provides an exception from disclosure for information relating 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.

This exception protects a governmental body's planning and negotiation position with respect to particular transactions. Open Records Decision No. 357 (1982). Section 552.105 is applicable not only to particular appraisal reports and purchase pricing for real estate, but also to information that pertains to such reports and pricing. Open Records Decision No. 564 (1990). We agree that section 552.105 excepts from disclosure the appraisal submitted as Exhibit F and the other appraisal submitted to this office for review.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of

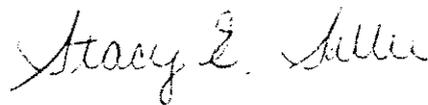
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<sup>3</sup>We understand that an executive summary of the appraisal has been provided to all persons interested in the sale of Lot 19.

the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. We believe that the documents marked as E-1 and E-2 pertain to the policymaking functions of the GLO. However, some of the information contained in these documents is purely factual. We have marked those portions of the documents that may be withheld from required public disclosure under section 552.111. The remaining information must be released.

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,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/rho

Ref.: ID# 100022

Enclosures: Marked documents

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