



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 19, 1997

Mr. Mark Walker
Senior Attorney
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR97-2105

Dear Mr. Walker:

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# 108673.

The Lower Colorado River Authority ("LCRA") has received a request for "all public files containing communications between the LCRA and Hill County Water Supply Corporation, including all staff files containing communications between the LCRA and Hill County Water Supply Corporation." You state that you have released the responsive documents which do not contain sensitive information. You contend that the remaining information is excepted from disclosure under sections 552.104, 552.105, and 552.106 of the Government Code.

Section 552.105 excepts from disclosure 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.

Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information excepted under section 552.105 that pertains to such negotiations may be excepted so long as the transaction is not complete. Open Records Decision No. 310 (1982). Because this exception extends to "information pertaining to" the location, appraisals, and purchase price of property, it may protect more than a specific

appraisal report prepared for a specific piece of property. 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)).

The Lower Colorado River Authority Act¹ provides that the LCRA may acquire by purchase, lease, gift, or in any other manner provided by law and maintain, use, and operate any and all property of any kind, real, personal or mixed or interest there, within or without the boundaries of the district, necessary or convenient in the exercise of the powers, rights, privileges and functions conferred to it by the Act. Also, section 49.211 of the Texas Water Code authorizes the LCRA to purchase, repair, improve or extend inside and outside its boundaries any and all land, works, improvements, facilities, plants, and equipment necessary to accomplish the purposes of its creation. *See also* Tex. Water Code Ann. §§ 49.213, .215.

LCRA is negotiating to acquire a water system, which includes both real property and personal property, facilities and equipment used in the transportation, storage, and distribution of potable water for consumption by the public. In order for LCRA to provide public water service from the system, LCRA must be able to recover its costs of acquiring the system. LCRA seeks to withhold a letter which reveals LCRA's proposed monthly rate projections, debt service coverage ratios for financing, average water service flow information (and projections for water service connections), LCRA operating expenses, and other information that can be used to decipher LCRA's purchase price for the system. LCRA asserts that knowing what rates LCRA plans to charge, how much water is projected to be sold, how many customer will be served over time, operating costs, and what the debt service coverage will be, will allow competitors to determine the purchase price as it would be a matter of making a few calculations to determine the purchase price. LCRA has determined that release of the information in the letter would damage its negotiating position with respect to the acquisition of the system.

Consequently, we believe that based on these arguments, together with the other information supplied by LCRA, that LCRA may withhold from disclosure the document contained within Attachment B under section 552.105 of the Government Code. As we address the issues presented under section 552.105, we need not address the other exceptions you assert.

¹Note that the Lower Colorado River Authority Act has not been repealed and is not carried into the Water Code but it has been dropped from Vernon's Texas Civil Statutes as special laws. *See* Lower Colorado River Authority Act, 73rd Leg., R.S., ch. 55, § 1, 1993 Tex. Gen. Laws 119-122.

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,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/ glg

Ref.: ID# 108673

Enclosures: Submitted documents

cc: Ms. Kristi A. Martin
Donald G. Rauschuber & Associates
P.O. Box 160010
Austin, Texas 78716
(w/o enclosures)

Hill Country Water Supply Corporation
P.O. Box 33280-280
Austin, Texas 78767
(w/o enclosures)

