



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 18, 1998

Ms. Kelly Fletcher Schurr
Assistant City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR98-1221

Dear Ms. Schurr:

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# 114945.

The City of Dallas (the "city") received a request for information pertaining to the acquisition of the sculptures and property related to the Raymond D. Nasher Sculpture Garden. You indicate that the city has made available for inspection most of the information requested except for a feasibility study and bond program. You claim that the information you have submitted is excepted from disclosure under section 552.105 and section 552.111 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)).

You advise us that the city's negotiations to purchase the properties are not complete and will be impaired if the submitted information is disclosed. We have examined the submitted documents and we agree that section 552.105(1) applies to this information until such time as the city completes the purchase. Accordingly, we have marked the documents which may be withheld from required public disclosure under section 552.105 of the Government Code.

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available bylaw to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* In Open Records Decision No. 559 (1990), the attorney general held that the predecessor statute to section 552.111 protects drafts of a document that have been or will be released in final form and any comments or other notations on the drafts because they necessarily represent the advice, opinion and recommendation of the drafter as to the form and content of the final document.

You also originally assert that the documents come within the exception of section 552.111. Although section 552.111 is raised, you do not explain how the documents pertain to the policymaking function of the governmental body. Consequently, we conclude that the city may not withhold the remaining documents from required public disclosure based on Government Code section 552.111. *See* Open Records Decision No. 559 (1990).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', with a long horizontal line extending to the right.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/alg

Ref.: ID# 114945

Enclosures: Marked documents

cc: Ms. Christine Biederman
Dallas Observer
P.O. Box 190289
Dallas, Texas 75219
(w/o enclosures)