



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 22, 1998

Mr. Larry Paul Manley
Executive Director
Texas Dept of Housing &
Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

OR98-2271

Dear Mr. Manley:

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# 118165.

The Texas Department of Housing and Community Affairs (the "department") received a request for a copy of an appraisal the department obtained on The Point Apartments in Dallas, Texas. You claim that the requested information is excepted from disclosure under sections 552.104 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 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 at 2 (1991), 463 (1987), 453 at 3 (1986). A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. *Open Records Decision* Nos. 541 at 4 (1990), 520 at 4 (1989). 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 at 2(1987). As the exception was developed to protect a governmental body's interests, that body may waive section 552.104. *See* *Open Records Decision* No. 592 at 8 (1991). Furthermore, section 552.104 is inapplicable when the bidding on a

contract has been completed and the contract is in effect. *E.g.*, Open Records Decision No. 541 at 5 (1990), 514 at 2 (1988), 319 at 3 (1982).

We have reviewed the arguments submitted by the department and it appears that the competitive situation ended July 7, 1998 with the foreclosure sale. The department has not offered any further information or argument to show its position would be harmed after July 7, 1998. Consequently, the department has not met its burden of establishing how release of a copy of the appraisal, the only information requested here is excepted under section 552.104. *See* Open Records Decision No. 453 (1986). Therefore, the department may not withhold a copy of the "The Point Apartments appraisal" under section 552.104 of the Government Code.

Next we observe that 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 at 2 (1990). 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 at 3 (1982) (quoting Open Records Decision No. 222 (1979)).

You advise us that the department's position would be harmed "if the appraisal is required to be released prior to the foreclosure sale on July 7, 1998" as the department's interest in recovering the most money possible from the sale will be harmed if the release of the information occurs prior to this date. You do not offer any arguments or rationale for withholding after July 7, 1998. Consequently, a copy of "The Point Apartments appraisal" may not be withheld from required public disclosure under section 552.105 of the Government Code. Accordingly, the appraisal 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/nc

Ref: ID# 118165

Enclosures: Submitted documents

cc: Ms. Erma J. Dodd
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(w/o enclosures)