

January 19, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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Ms. Jennifer D. Soldano
Associate General Counsel
Texas Department of Transportation
125 E. 11th St., Dewitt Greer State Building
Austin, Texas 78701-2483

OR99-0129

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121365.

The Texas Department of Transportation (the "department") received a request for "copies of all the appraisals on the properties where Right of Way takings have been purchased along Highway 199." You contend that the requested appraisals are exempted from disclosure under sections 552.103 and 552.105 of the Government Code. We have considered the exceptions you claim and have reviewed a representative sample of the documents at issue.¹

Section 552.105 exempts 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.

¹We 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.

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). 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)). Information excepted from disclosure under section 552.105 may be withheld so long as the transaction is not complete. Open Records Decision No. 310 (1982).

You explain that "[t]he department is in the process of acquiring, as right of way, a corridor of property for Highway 199. Parcels are in the process of being purchased and some are in eminent domain litigation." You state that releasing the requested information "would in all likelihood not only adversely affect the department's current negotiation efforts to amicably purchase the property but would also have the potential of adversely affecting the department's litigation position for those unacquired parcels of property." Under these circumstances, we conclude that the requested appraisals are excepted from disclosure under section 552.105. The department may withhold the appraisals under section 552.105 until the department acquires the remaining parcels needed for the Highway 199 project.

Because we are able to resolve this matter under section 552.105, we do not address your additional arguments against disclosure. 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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

REF: ID# 121365

Enclosures: Submitted documents

cc: Ms. Cheryl Curry
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(w/o enclosures)