



October 15, 1999

Mr. C. Robert Heath  
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.  
1700 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR99-2942

Dear Mr. Heath:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128144.

The Lower Colorado River Authority (the "authority"), which you represent, received a written request for eleven categories of information. You state that the authority will make most of the requested information available to the requestor. You seek to withhold, however, certain other documents pursuant to sections 552.105 and 552.107(1) of the Government Code.<sup>1</sup>

You first contend that certain records you submitted to this office are excepted from required public disclosure pursuant to section 552.107(1) of the Government Code, which protects information coming within the attorney-client privilege. *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* After reviewing the documents for which you raise section 552.107(1), we generally agree that most of the records you seek to withhold may properly be withheld under this exception. We have marked the protected portions of a few of the records that also contain public information, as well as one document that must be released in its entirety.

You next contend that the documents you have designated as pages 41 through 78, which relate to the proposed purchase of water rights held by the authority, may be withheld from the public pursuant to section 552.105(1) of the Government Code. Additionally, you contend that pages 41 through 70 also come within the protection of section 552.105(2).

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<sup>1</sup>Although you raised additional exceptions to disclosure in your initial correspondence to this office, you have not briefed us on the applicability of those exceptions, which we now deemed as being waived.

Section 552.105 of the Government Code excepts from required public 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.

“The opinions construing section [552.105], as well as the actual language of the exception, tie the provision to situations entailing the expenditure of public funds to acquire or use the subject property for public purposes in order to prevent speculation from inflating the price.” Open Records Decision No. 590 at 4 (1991); *see also* Open Records Decision No. 357 (1982). We conclude that you have not met your burden of demonstrating the applicability of section 552.105 in this instance. Consequently, the authority must release pages 41 through 78 to the requestor.

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.

Sincerely,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/RWP/nc

Ref.: ID# 128144

Encl. Submitted documents

cc: Mr. William G. Bunch  
Save Our Springs Alliance  
P.O. Box 684881  
Austin, Texas 78768  
(w/o enclosures)