



February 15, 2000

Ms. Janice Marie Wilson
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR2000-0547

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 132196.

The Texas Department of Transportation (the "department") received a request for information relating to leases of real property by billboard owners along the Interstate Highway 10 corridor between Houston and Katy. You claim that the requested information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.105 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.

Gov't Code § 552.105. The purpose of section 552.105 is to protect a governmental body's planning and negotiating position with respect to particular real or personal property transactions. Open Records Decision No. 357 (1982). Consequently, section 552.105 is intended to operate only for a limited period of time. Open Records Decision No. 222 (1979). Because this exception encompasses "information relating to" the location, appraisal and purchase price of property, it potentially protects more than a specific appraisal report pertaining to a particular piece of property. Open Records Decision No. 564 (1990). This

office has concluded, for example, that appraisal information about parcels of land that were acquired prior to the acquisition of other tracts in connection with the same project could be withheld, where disclosure of the appraisal information would impair the governmental body's bargaining position with respect to the remaining tracts. *Id.* The exception for information pertaining to "purchase price" in section 552.105(2) also applies to information pertaining to a lease price. Open Records Decision No. 348 (1982).

In support of the department's claim under section 552.105, you assert:

When TxDOT purchased the I-10 corridor from the Missouri Pacific Railroad Company on December 29, 1992, approximately 200 off-premises signs were located on the property. A letter terminating those leases was issued by Missouri Pacific prior to the TxDOT purchase. Under a negotiated settlement with the sign owners, these signs are tentatively scheduled to be relocated within the next two years.

The Missouri Pacific purchase included, in some areas, only an easement over necessary real estate. Future I-10 development projects are expected to require TxDOT to purchase the fee interest in some properties as to which an easement was acquired . . . The value of these sign leases along the I-10 corridor may affect the purchase price of the fee interest in real property along that corridor. Therefore, releasing this information could adversely affect the price that TxDOT would have to pay for this real estate.

We note that you have not asserted that the requested information pertains to any specific pending or prospective transaction involving the I-10 corridor. Additionally, this office has received further correspondence from the requestor, modifying her request to encompass "leases covering only those billboards on properties that have already been purchased in fee simple by TxDOT from Missouri Pacific Railroad." Thus, information responsive to the request involves only completed transactions. The department has not sufficiently explained how the release of information relating to property it already has acquired would affect any specific future transaction. *See* ORD 222 (protection of section 552.105 generally expires upon governmental body's acquisition of property in question). We therefore conclude that the department may not withhold the requested information pursuant to section 552.105 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

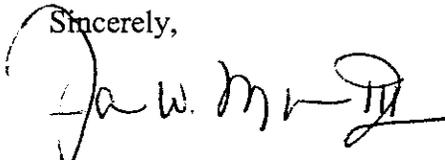
from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ch

Ref: ID# 132196

Encl. Submitted documents

cc: Ms. Mary Carter
Blackburn & Carter
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(w/o enclosures)