



August 7, 2000

Mr. John Steiner
City Of Austin
114 West 7th Street
P O Box 1546
Austin, Texas 78767-1546

OR2000-2972

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 137770.

The City of Austin (the "city") received a request for "all records of correspondence" and "all other information relating to the potential sale, lease, conservation, development or other disposition of the H. E. Brodie tract since date of the City's purchase[.]" You have submitted for our review a representative sample of information that is responsive to the request, marked by you as exhibits "1," "2A," "2B," "3," and "4."¹ The requestor has also submitted comments to this office. *See* Gov't Code § 552.304. You assert that the requested information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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

¹In reaching our conclusion here, we 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.

(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 relating 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)). The question of whether specific information, if publicly released, would impair a governmental body’s planning and negotiation position in regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body’s good faith determination in this regard, unless the contrary is clearly shown as a matter of law. Open Records Decision No. 564 (1990). You explain:

The requested information relates to a program of land acquisition approved by Austin’s voters in a bond election in May 1998. The bond issue (known as Proposition 2) approved \$65 million in utility revenue-supported bonds for the purchase of real property, including fee title and easements, in the Barton Springs contributing zone. The City is engaged in ongoing negotiations for the purchase of property under this program. Some of the property acquired under the program may be resold subject to conservation easements or other development controls. All of the land under the program is in a particular area south and west of Austin. The release of appraisals of one parcel will affect the City’s negotiating position with respect to the others.

As to the specific tract that is the subject of the present request, you state:

The City is in the midst of negotiations with a specific party regarding the disposition of the tract named by the requestor. The City’s negotiating position would be severely and negatively affected if the requested information were released.

Based on the above representations and our careful review of the submitted information, we believe that you have demonstrated the applicability of section 552.105. You therefore may withhold the requested information under section 552.105 at this time.

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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 137770

Encl. Submitted documents

cc: Ms. Cora Quinn
Barton View Neighborhood Association
3205 Cupid Drive
Austin, Texas 78735
(w/o enclosures)