



May 21, 2001

Ms. Barbara Holston
Executive Director
Fort Worth Housing Authority
P.O. Box 430
Fort Worth, Texas 76101

OR2001-2096

Dear Ms. Holston:

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# 147400.

The Fort Worth Housing Authority (the "authority") received two requests for information relating to the Ripley Arnold Apartments (the "apartments"), including "a copy of the application requesting approval for the sale of the [apartments] which was sent to the U.S. Department of Housing and Urban Development." You claim that the requested information is excepted from disclosure under sections 552.105 and 552.111 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first address your representation that the authority has no information regarding potential redevelopment sites or short-term/temporary locations for residents of the apartments. The Public Information Act does not require a governmental body to disclose information that did not exist when the request for the information was received. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

We next note that some of the submitted documents fall within the scope of section 552.022 of the Government Code. Section 552.022 provides in relevant part that:

the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1) (emphasis added). You do not raise section 552.108. Sections 552.105 and 552.111 are discretionary exceptions to disclosure that protect the interests of governmental bodies and may be waived. As such, these exceptions do not constitute other law that makes information expressly confidential for purposes of section 552.022. See Open Records Decision Nos. 665 at 2 n.5 (2000), 522 at 4 (1989). Accordingly, section 552.022 requires the release of the "Complete Appraisal Summary Report" (Exhibit E), the "Complete Appraisal Restricted Use Report" (Exhibit F), and the appraisal report at Tab C in Exhibit D. We have marked the documents that the authority must release under section 552.022(a)(1).

We now consider your claim that the remaining information in Exhibit D is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 protects inter-agency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the governmental body's policymaking processes. See *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993). The purpose of section 552.111 is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.) (emphasis added). However, an agency's policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, No. 03-00-00219-CV, 2001 WL 23169 (Tex. App. -- Austin 2001, no pet. h.); Open Records Decision No. 615 at 5-6 (1993); *but see* Open Records Decision No. 631 (1995) (finding personnel matters of a broader scope were excepted from disclosure under section 552.111). Having reviewed the information at issue, we conclude that it does not consist of advice, opinions, recommendations, or other material reflecting the policymaking processes of the governmental body. Therefore, you may not withhold the rest of Exhibit D under section 552.111 of the Government Code.

You also claim that portions of Exhibit D are excepted from disclosure under section 552.105 of the Government Code. 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.

Gov't Code § 552.105. Section 552.105 protects a governmental body's planning and negotiating position with respect to particular transactions. *See* Open Records Decision No. 564 at 2 (1990). This exception protects information relating to the location, appraisal, and purchase price of property until the transaction is either completed or canceled. *See* Open Records Decision Nos. 357 at 3 (1982), 310 at 2 (1982). 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.'" *See* ORD 357 at 3 (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. *See* Open Records Decision No. 564 (1990).

You represent to this office that although a contract of sale has been signed for the sale of the apartments, the closing of the contract is conditioned upon several conditions precedent that may still occur. You explain that the contract provides for a "Feasibility Review Period of 120 days during which the Buyer may elect not to proceed with the Contract of Sale for any reason or for no reason." You state that if the contract does not close, the release of the appraisal information and purchase price would adversely affect the authority's negotiating position with regard to other potential buyers. Based on your representations and our review of the submitted information, we agree that the sale of the apartments is not yet consummated. Moreover, we believe that you have demonstrated that section 552.105 protects some of the information relating to the sale that you seek to withhold. We have marked the portions of Exhibit D that are excepted from disclosure under section 552.105. *See also* Open Records Decision No. 291 (1981) (concluding that statutory predecessor protected governmental body's application to federal Department of Housing and Urban Development for federal funding).

Finally, we further note that Exhibit D also contains information that is protected by section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common law right to privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, *and* (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Furthermore, this office has concluded that common law privacy protects some kinds of medical information or information indicating disabilities or specific illnesses. *See* Open

Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the information in Exhibit D that you must withhold under section 552.101 of the Government Code in conjunction with common law privacy.

In summary, the authority must release all of Exhibits E and F and the appraisal report at Tab C in Exhibit D under section 552.022(a)(1) of the Government Code. The authority may withhold marked portions of Exhibit D under section 552.105 of the Government Code. You also must withhold other marked information in Exhibit D under section 552.101. The rest of the information at issue in Exhibit D is not excepted from disclosure and also must be released.

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).

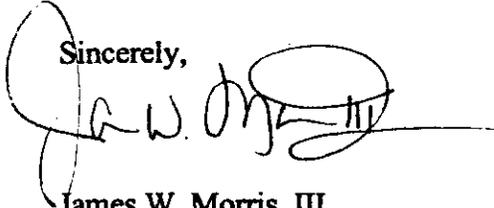
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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", with a horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 147400

Encl: Marked documents

cc: Ms. Bechetta Jackson
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(w/o enclosures)

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