



November 29, 2001

Ms. Tenley A. Aldredge
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2001-5552

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155432.

The Travis County Transportation and Natural Resources Department (the "department") and the Travis County Attorney's Office (the "county") received a request for "copies of all correspondence, telephone records, communication, contracts or agreements regarding negotiations or attempts to sell or acquire the 187 acre tract of land located off FM 2769 owned by Chuck, Carol and Shawn Toops." The county advises that a number of responsive documents are being released. Two separate briefs have been submitted by the county to this office to address the information in the county's possession and the information in the department's possession. We will first address the county's arguments in relation to information in the county's possession. The county claims that some of the requested information is excepted from disclosure under sections 552.105 and 552.107 of the Government Code. We have considered the claimed exceptions 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.

Under section 552.105, 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 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). This office has concluded that information about specific 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. Open Records Decision No. 564 at 2 (1990). 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 state that the requested information relates to the location or price of real property for a public purpose, and consists of draft contracts and attorney notes related to the purchase of the Toops family's property. You advise that there has been no formal award of the property contracts. You claim that release of these documents may impact the department's ability to carry out the land purchasing process, as the department's negotiating position with the affected property owners and/or other interested parties may be impaired. After reviewing the submitted information, we conclude that you have demonstrated the applicability of section 552.105 to the submitted documents. Therefore, you may withhold the documents pursuant to section 552.105. As section 552.105 is dispositive, we do not address your claim under section 552.107 for these documents.

Next, we address the county's arguments for excepting the information submitted as responsive to the request to the department. You claim that the information is excepted under sections 552.101, 552.105, and 552.107. As you submit arguments identical to the ones above in support of excepting some of these documents from disclosure under section 552.105, the same principles as set forth above apply. We conclude that some of the documents in the department's possession, which we have marked, may be withheld under section 552.105.

Furthermore, you claim that section 552.107 operates here to except some of the information responsive to the request to the department. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 except from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). Upon review of the information, we conclude that some of the

documents contain privileged information that is excepted from required public disclosure. We have marked the documents that may be withheld pursuant to section 552.107.

Finally, you contend that the responsive information contains personal financial information that is confidential under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law 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. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has held that personal financial information not related to a financial transaction between an individual and a governmental body is protected by common law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). After reviewing the submitted documents, however, we conclude that they relate to financial transactions between individuals and the department. As a result, none of the information is confidential under section 552.101 pursuant to common law privacy.

In summary, you may withhold the documents responsive to the request to the county under section 552.105. You may withhold some of the documents responsive to the request to the department under section 552.105, and may withhold some of the documents under section 552.107. You must release the remainder of these documents.

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

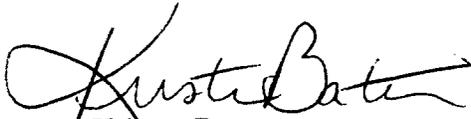
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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 Texas Building and Procurement 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 155432

Enc. Submitted documents

c: Mr. Robert MacInnes
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(w/o enclosures)