



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2005

Ms. Sharon Alexander
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2005-05066

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225761.

The Texas Department of Transportation (the "department") received a request for the following information related to development and construction of "the north bound service/access road on the east side of Interstate Highway 35W north of its intersection with State Highway 114 to the north bound services/access road's intersection with Dale Earnhart Way" (the "road"). Specifically, the requestor seeks:

1. All written agreements between [the department] or the State of Texas, and any other political subdivision of the State of Texas . . . concerning the development and construction of the [road].
2. All written agreements between [the department] or the State of Texas and any private person or entity concerning the development and construction of the [road].
3. All written communications between [the department] or the State of Texas and C. D. Panattoni Development Company, LLC ["Panattoni"], Northport Commercial, LTD, SH 114/IH35N Ventures, LTD., Daniel Anderson, Jon Napper, Karl Benson, Sylvia Schroeder, and or (sic) Omar Harvey.
4. Any documents that evidence the commencement date of construction for the [road].

5. Any documents that evidence the completion date of construction for the [road].
6. Any photographs of the construction site of the [road] before, during, and following construction.

You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

As a preliminary matter, we note the sample documents you have submitted consist of a letter from Panattoni to the department, one page of plans for a "proposed state highway improvement," and a department request for eminent domain proceedings. You have not submitted information responsive to parts 1, 2, and 6 of the request. We therefore assume that, to the extent it exists, any information maintained by the department that is responsive to these portions of the request has been released to the requestor. If not, the department must release such information immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that Gov't Code § 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances). We now address your arguments with respect to the sample information you have submitted.

Section 552.105 excepts from disclosure information relating to:

- (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(2). 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 (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). 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).

¹ We assume that the 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.

You state that the department “has made a good faith determination that the [information at issue] pertains to the appraisal or purchase price of real property that it intends to purchase.” You further state the information at issue “is related to the prices that must be paid for real and personal property.” Based on your representations and our review of the submitted documents, we agree that section 552.105 applies in this instance. Accordingly, the department may withhold the information at issue under section 552.105 of the Government Code.²

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. Dep’t of Pub. 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

² As our ruling on this issue is dispositive, we need not address your remaining argument against disclosure.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/jev

Ref: ID# 225761

Enc. Submitted documents

c: Mr. William Kester
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(w/o enclosures)