



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2007

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P. O. Box 2000
Lubbock, Texas 79457

OR2007-04460

Dear Ms. Sims:

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# 276401.

The City of Lubbock (the "city") received two separate requests from the same requestor for information regarding "Lots 13 through 24, Block 231, Original Town." You state the city does not have information responsive to parts of the request.¹ You claim that the responsive information is excepted from disclosure under sections 552.101 and 552.105 of the

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

Government Code.² We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note one of the requests asks the city to answer factual and legal questions. This office has stated on numerous occasions that the Act does not require governmental bodies to answer factual questions or perform legal research. *See, e.g.*, Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, we note that a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Further, a governmental body may not refuse to comply with a request on the ground of administrative inconvenience. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (1976), *cert. denied*, 430 U.S. 931 (1977) (cost or difficulty in complying with predecessor of Act does not determine availability of information); Open Records Decision No. 497 (1988). In this case, as you have submitted responsive information for our review and raised exceptions to disclosure for these documents, we consider the city to have made a good-faith effort to identify information that is responsive to the request, and we will address the applicability of your claimed exceptions to the submitted information.

Next, we note that the submitted information contains a contract for the sale of land to the city that is subject to section 552.022 of the Government Code. Section 552.022(a)(3) provides for the required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body," unless the information is expressly confidential under other law. *Id.* § 552.022(a)(3). You claim this contract is excepted from disclosure under section 552.105 of the Government Code. However, section 552.105 is a discretionary exception to disclosure that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 564 (1990) (statutory predecessor to section 552.105 subject to waiver). Because this section is *not other law that makes information confidential* for purposes of section 552.022, the city may not withhold this contract, which we have marked, under section 552.105 of the Government Code; thus, it must be released to the requestor. We however address all the exceptions you raise for the remaining information at issue.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by statute. You raise

²Although you also raised sections 552.103, 552.107, 552.108, and 552.111 of the Government Code, you have not submitted any arguments regarding the applicability of these exceptions nor have you identified any information you seek to withhold under these exceptions. Therefore, we assume you do not assert these exceptions to disclosure. *See* Gov't Code §§ 552.301, .302.

section 552.101 in conjunction with section 551.104 of the Open Meetings Act, chapter 551 of the Government Code. Section 551.104 provides in part that “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).” *Id.* § 551.104(c). Thus, such information cannot be released to a member of the public in response to an open records request. Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See id.* § 551.146(a)-(b); *see also* Attorney General Opinion JM-1071 at 3 (1989) (statutory predecessor to Gov’t Code § 551.146 did not prohibit members of governmental body or other individuals in attendance at executive session from making public statements about subject matter of executive session); Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether governmental body may withhold such information under statutory predecessor to Gov’t Code § 552.101). You inform us that the responsive information includes a certified agenda of a closed session of the city council. Based on your representations, we agree that the city must withhold this certified agenda under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.

Section 552.105 of the Government Code 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 is designed to protect 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, appraisals, and purchase price of property only until the transaction is either completed or aborted. *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.’” Open Records Decision No. 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 state that “[t]he [c]ity has neither announced plans for acquisition of the property discussed within the request[s] nor has any such property been acquired.” You also state that if the information in question was released, “the [c]ity’s position in negotiating any potential

acquisition of such property would be damaged.” Based on your representations and our review of the information in question, we conclude that the city may withhold this information under section 552.105 of the Government Code.

In summary, the marked contract must be released pursuant to section 552.022 of the Government Code. The responsive certified agenda must be withheld under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code. The remaining submitted information may be withheld under 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, 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); *Texas 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 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 Office of the Attorney General 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 "Ramsey Abarca".

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 276401

Enc. Submitted documents

c: Mr. Armando Gonzales
3912 East 3rd Street
Lubbock, Texas 79403
(w/o enclosures)