



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 18, 2008

Mr. Clark Stockton Lord  
Vinson & Elkins  
1001 Fannin Street Suite 2500  
Houston, Texas 77002-6760

OR2008-11263

Dear Mr. Lord:

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# 321301.

The Roberts County Fresh Water Supply District No. 1 (the "district"), which you represent, received a request for several categories of information relating to the district, including several categories of information pertaining to the district's Joint Right-of-Way Project. You state that some of the requested information has been released to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the requestor seeks certain legislative acts, the identification of which, you assert, would require the district to conduct legal research. *See Gov't Code § 552.227.* The district is not obligated to perform general research for a requestor. *Id.* However, the district must make a good faith effort to relate the request to information which it holds. Open Records Decision No. 561 at 8 (1990).

We also note that the submitted information contains a resolution of the district's board. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See Open Records Decision No. 221 at 1 (1979)* ("official records of the public proceedings of a governmental body are among the most open of records"); *see also Open Records Decision No. 551 at 2-3 (1990)* (laws or ordinances are open records). The submitted resolution is analogous to an ordinance. Accordingly, the district may not withhold the portions of the submitted resolution that you have marked and must release it in its entirety.

Section 552.105 of the Government Code excepts from disclosure information relating to "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). "The opinions construing section [552.105], as well as the actual language of the exception, tie the provision to situations entailing the expenditure of public funds to acquire or use the subject property for public purposes in order to prevent speculation from inflating the price." Open Records Decision No. 590 at 4 (1991); *see also* Open Records Decision No. 357 (1982). Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. *See* Open Records Decision No. 564 at 2, 357 at 3. Information protected by section 552.105 that pertains to such negotiations may be withheld for so long as the transaction is not complete. *See* Open Records Decision No. 310 at 2 (1982).

Moreover, this office also has concluded that information about specific parcels of land obtained in advance of other parcels to be acquired for the same project could be withheld where release of the information would harm the governmental body's negotiating position with respect to the remaining parcels. *See* Open Records Decision No. 564 at 2. 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 Nos. 357 at 3, 222 at 1-2 (1979). The question of whether specific information, if publicly released, would impair a governmental body's planning and negotiating position with 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 at 2.

Upon review, we find the district has made a good faith determination that the remaining information at issue relates to the appraisal or purchase price of real property that the district intends to purchase. *See* Open Records Decision No. 564 (appraisal information about parcels of land acquired in advance of others to be acquired for same project could be withheld where information would harm governmental body's negotiating position with respect to remaining parcels). Based on your representations, we conclude that the district may withhold the portions of the submitted handbook which you have marked under section 552.105 of the Government Code.

In summary, the district may withhold the marked portions of the handbook under section 552.105. The resolution must be released in its entirety.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

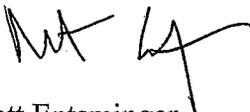
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/mcf

Ref: ID# 321301

Enc. Submitted documents

c: Mr. Zachary S. Brady, P.C.  
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(w/o enclosures)