



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 10, 2008

Mr. Matthew C.G. Boyle  
Town Attorney  
Boyle & Lowry, L.L.P.  
4201 Wingren, Suite 108  
Irving, Texas 75062-2763

OR2008-16861

Dear Mr. Boyle:

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# 329646.

The Town of Argyle (the "town"), which you represent, received a request for all documents related to the purchase of a particular piece of land by elected officials, including appraisals, purchase contracts, staff and consultant reports, e-mails, and documents disclosing conflicts of interest. You state you have provided most of the requested information to the requestor. You claim that the submitted information is not subject to the Act. Alternatively, you claim that the submitted information is excepted from disclosure under section 552.105 of the Government Code. We have considered the arguments you make and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *See* Gov't Code § 552.002(a). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right

of access to the information and it relates to the transaction of official business. *See* Open Records Decision Nos. 462 (1987), 445 (1986); *cf.* Open Records Decision No. 499 (1988).

In this instance, you explain that the town has been exploring real estate options for a new Town Hall, and among the town's options is a parcel of land owned at least in part by the Mayor. You state that the Mayor is acting as an independent third party relative to this transaction, has timely completed the Conflict of Interest Affidavit, and has not participated in any Town Council discussions or considerations of the land he owns. You inform us the submitted information consists of a private appraisal obtained by the Mayor prior to these negotiations, which was not provided to the town as part of this potential transaction. You state that it was only in response to the current request that the Mayor provided the town with the appraisal. Thus, you argue that the appraisal was not collected, assembled, or maintained under a law or in connection with the potential real estate transaction. Based on your representations, we find that the submitted information is not subject to the Act and need not be released in response to this request. As our ruling is dispositive, we need not address your remaining argument or the requestor's comments regarding this information.

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).

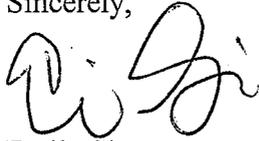
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Emily Sitton  
Assistant Attorney General  
Open Records Division

EBS/eeg

Ref: ID# 329646

Enc. Submitted documents

c: Requestor  
(w/o enclosures)