



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2009

Mr. Alva I. Trevino
Deputy General Counsel
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429

OR2009-00123

Dear Mr. Trevino:

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# 331428 (your ID# 2009-0004).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for several categories of information pertaining to properties that were recently listed in a specified public notice, including Harris County Appraisal District ("HCAD") tax identification numbers for each property. You state that the authority does not maintain responsive HCAD tax identification information.¹ You claim that the portions of the submitted parcel lists are excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the information at issue is subject to section 552.105 of the Government Code. 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.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

Section 552.105 was designed to protect a governmental body's planning and negotiating position with respect to particular transactions. 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. Open Records Decision Nos. 357 at 3 (1982), 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 ORD 564 at 2. 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 *id.*

In this instance, you state that the information at issue pertains to properties currently being purchased by the authority for its light rail system. You acknowledge that the legal descriptions of the parcels at issue have already been publicly released. You seek to withhold owner information and property addresses under section 552.105 because release of this information "could significantly increase the price to be paid on other properties along the project areas and could severely harm [the authority] by compromising its negotiating position." Upon review, we find the authority has made a good faith determination that the information at issue relates to the appraisal or purchase price of real property that the authority intends to purchase. See ORD 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 authority may withhold the information at issue 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 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 331428

Enc. Submitted documents

c: Requestor
(w/o enclosures)