



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 18, 2009

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2009-02096

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# 337631.

The Texas Department of Transportation (the "department") received two requests for a copy of the schematic and right of way map for the FM 732 road widening project. The December 31, 2008 requestor also asked for the environmental impact statement on the FM 732 road widening project. The January 9, 2009 requestor also asked for a list of all road widening projects in Cameron County. The submitted information consists of schematic and right of way maps. You state that you will release the final environmental assessment but claim that the submitted information is excepted from disclosure under sections 552.105 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have only submitted records of schematic and right of way maps as a representative sample of the requested information. We assume that this information is representative of this category of responsive records. *See* Open Records Decision Nos. 499 (1988), 497 (1988). However, we note that in the request received on January 8, 2009, the requestor sought a list of all road widening projects in Cameron County, and no information responsive to this portion of the January 8, 2009 request was submitted to our office for review. To the extent any information responsive to this category of information existed when the department received this request, we assume you have released

it to the requestor. If you have not released any such information, you must do so now. *See* Gov't Code §§ 552.301(a), 552.302.

Section 552.105 of the Government Code excepts from disclosure information that relates 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 regard to particular transactions. *See* Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information that is excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted from disclosure so long as the transaction relating to that information is not complete. *See* ORD 310. But the protection offered by section 552.105 is not limited solely to transactions not yet finalized. This office 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. 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.'" ORD 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 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* ORD 564.

You state that the submitted information pertains to the location and appraisal or purchase price of real property that the department intends to purchase. Further, we understand you to assert that release of this information would harm the department's negotiating position when purchasing property. Based on your representations and our review, we conclude that the department may withhold the submitted information under section 552.105 of the Government Code.<sup>1</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eb

Ref: ID# 337631

Enc. Submitted documents

c: Requestors  
(w/o enclosures)