



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2010

Ms. Jenny Gravley
Attorney for city of Haltom
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2010-07667

Dear Ms. Gravley:

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# 380744.

The City of Haltom City (the "city"), which you represent, received a request for the date and closing cost, completed contract, amount and date of purchase, information regarding the public meeting in which the purchase was approved, and all consultant and maintenance fees associated with each parcel of land owned or purchased with public funds by either the city or the Haltom City Economic Development Corporation for a specified geographic area. You state you will release some of the information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.103 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from 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 address the requestor's contention that the submitted information is subject to sections 552.022(a)(3) and 552.0225(b)(9) of the Government Code. Section 552.022(a)(3) requires 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). Section 552.0225(b)(9) states the total amount of fees, including expenses, charges, and other compensation paid by the governmental body to any fund or investment entity or principal of any fund or investment

entity in which the governmental body is or has invested is public information and not excepted from public disclosure. *See id.* § 552.0225(b)(9). Upon review, we determine that the submitted information does not consist of information in an account, voucher, or contract relating to the receipt or expenditure of public funds for purposes of section 552.022(a)(3). Additionally, we conclude the submitted information does not pertain to any fund or investment entity in which the city is or has invested. Thus, none of the submitted information is subject to section 552.022(a)(3) or section 552.0225(b)(9). Therefore, we will address the city's claimed exceptions.

Section 552.103 of the Government Code provides:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Id. § 552.103(a), (c). When a governmental body receives a request for information that relates to pending or anticipated litigation, it may raise section 552.103 as an exception to disclosure in order to protect its litigation interests. *See id.* 552.103; Open Records Decision No. 551 at 4 (1990) (noting that predecessor to section 552.103 protects discovery process and avoids interference in matters properly resolved in court by excepting from disclosure information when access to such material is more appropriately sought through discovery). The governmental body claiming this exception bears the burden of providing relevant facts and documents to demonstrate the applicability of the exception. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); ORD 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, that prior to the city's receipt of the present request for information, a lawsuit styled *Enterprise Texas Pipeline LLC vs. Haltom City*, Cause No. 10-78670-3 was filed and is currently pending in County Court at Law #3 for

Tarrant County. You inform us that the lawsuit relates, in part, to the condemnation of properties described in the present request and was filed against the city. We therefore agree that litigation to which the city is a party was pending on the date the city received the request. We further find that the information at issue relates to the pending litigation. Therefore, the city may withhold the information you have marked under section 552.103 of the Government Code.

We note, however, that once the information at issue has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to the information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, any information at issue that has either been obtained from or provided to all opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

Next, you claim the remaining submitted information is excepted from disclosure under section 552.105 of the Government Code. Section 552.105 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 the city has made a good-faith determination that the information at issue relates to the location of real property that the city has purchased as part of a larger public project. You state that the city is actively planning and negotiating for the purchase of several parcels of real property for this project. Further, you state that release of the information at issue would harm the city's negotiating position with respect to the future purchase of parcels of land as part of this project. Based on your representations and our review, we conclude the city may withhold the remaining information under section 552.105 of the Government Code.

In summary, the city may withhold the information you have marked pursuant to sections 552.103 and 552.105 of the Government Code.

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.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 380744

Enc. Submitted documents

cc: Requestor
(w/o enclosures)