



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 4, 2010

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2010-11762

Dear Mr. Bounds:

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# 389184.

The City of Corpus Christi (the "city") received a request for (1) all correspondence from a named individual to the city in 2009 or 2010 concerning the sale of the Memorial Coliseum to a private entity; (2) the original deed or patent for the Memorial Coliseum property/land; and (3) all correspondence or proposals sent or received by the city in 2009 or 2010 regarding the creation of a new hotel near a specified location.¹ You state you will release some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.105 of the Government Code.² You also state that release of some of the submitted information may implicate the proprietary interests of Pate Development Company ("Pate") and SMG (collectively, the "third parties"). Accordingly, pursuant to section 552.305 of the Government Code, you notified the third parties of the request and of their right to submit comments to this office as to why the requested information should not be released to the requestor. *See Gov't Code § 552.305(d); see also Open Records Decision*

¹You state that the city sought and received clarification of the request for information. *See Gov't Code § 552.222(b)* (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²We note in your brief dated June 8, 2010, you state you withdraw your other assertions under the Act.

No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have received comments from Pate and SMG. We have also received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Section 552.105 of the Government Code 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.

Id. § 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). This office has held that section 552.105 applies to leases as well as purchases of real estate. *See* Open Records Decision No. 348 (1982). Information excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted so long as the transaction relating to those negotiations is not complete. *See* ORD 310. 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 submitted information pertains to the location of real property currently the subject of lease negotiations. You state the city has made a good-faith determination that release of the submitted information at this time would severely damage and compromise the city's negotiating position with respect to any lease or potential lease of the property in question. Based on your representations and our review of the information in question, we conclude the city may withhold the submitted information under section 552.105 of the Government Code.³

³As our ruling is dispositive, we need not address the third parties' arguments against disclosure.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 389184

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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