



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2010

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701

OR2010-15146

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# 395826.

The Texas Department of Transportation (the "department") received a request for all proposed plans pertaining to a right of way for three specified projects, or, if no proposed plans are available, the preliminary plans, meeting records, or other documents pertaining to the right of way. You claim the requested design plans are excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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.

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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

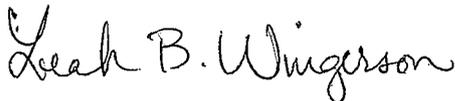
Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted from disclosure so long as the transaction relating to that information is not complete. *See* ORD 310. But, the protection offered by section 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 submitted right of way design plans pertain to parcels of land the department is negotiating to purchase for public use. You indicate release of the information at issue would harm the department's negotiating position with respect to the purchase of the land at issue. Based on your representations and our review of the information, we conclude the department may withhold the requested design plans under section 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

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Enc. Submitted documents

c: Requestor
(w/o enclosures)