



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2010

Ms. Jenny C. Gravley
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2010-15691

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# 397127.

The City of Southlake (the "city"), which you represent, received a request for information for all executive sessions of the city council from January 1, 2010, to the date of the request. You state the city is withholding a certified agenda of a closed meeting under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code pursuant to the previous determination in Open Records Decision No. 684 (2009).¹ You claim the submitted 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 considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹We note the city is not required to submit a certified agenda of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code). Further, this office recently issued Open Record Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a certified agenda of a closed meeting under section 552.101 in conjunction with section 551.104 of the Government Code, without the necessity of requesting an attorney general decision.

Initially, we address the requestor's assertion the city failed to comply with the procedural requirements of section 552.301(d) of the Government Code. Pursuant to section 552.301(d), the governmental body must provide the requestor, within ten business days after the date of its receipt of the request for information, a statement the governmental body has asked for a decision from the attorney general and a copy of the governmental body's written communication to the attorney general asking for a decision. *See id.* § 552.301(d). You state, and provide documentation showing, the city received the present request for information on July 26, 2010. Thus, the city's ten business day deadline under subsection 552.301(d) was August 9, 2010. The envelope in which the city sent this office the information required under section 552.301(b) bears a postmark date of August 9, 2010. *See id.* § 552.308 (request is timely if sent by first class United States mail properly addressed with postage or handling charges prepaid and bears post office cancellation mark or receipt mark of carrier indicating time within that period). Additionally, the city's brief to this office contains a notation the requestor was copied on the brief on that date. Whether the city actually sent the requestor a copy of the city's brief on August 9, 2010, is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See Open Records Decision No. 522 at 4 (1990)*. Therefore, we conclude the city complied with the procedural requirements of section 552.301(d) and will address its arguments against disclosure.

Section 552.105 of the Government Code excepts from disclosure information relating to "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(2). 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 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*. 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 the requested information relates to the appraisal or purchase price of real property the city intends to purchase or condemn if required. Further, you state release of the requested information would harm the city's negotiating position when purchasing the property at issue. Based on your representations and our review, we conclude the city may withhold the submitted information under

section 552.105. As our ruling is dispositive, we need not address your remaining argument 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/tp

Ref: ID# 397127

Enc. Submitted documents

c: Requestor
(w/o enclosures)