



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2011

Mr. Andrew Martin
General Counsel
Central Texas Regional Mobility Authority
301 Congress Avenue, Suite 650
Austin, Texas 78701

OR2011-05869

Dear Mr. Martin:

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# 415883.

The Central Texas Regional Mobility Authority (the "authority") received a request for information pertaining to the appraisals of seven specified properties.¹ You state you are providing the requestor with some of the requested information. You claim that the submitted information is 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.²

¹You inform us the authority asked for and received clarification regarding the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²We 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. We further note the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the date the request was received. This ruling does not address the public availability of non-responsive information, and the authority is not required to release non-responsive information in response to this request.

Next, we note some of the information constitutes completed appraisal reports subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). You seek to withhold the submitted completed appraisal reports under section 552.105 of the Government Code. However, section 552.105 is discretionary in nature and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 564 (1990) (statutory predecessor to section 552.105 subject to waiver). Thus, the authority may not withhold this information, which we have marked, under section 552.105. As you raise no additional exceptions to disclosure, the authority must release this information. However, we will address your argument under section 552.105 for the remaining information not subject to section 552.022.

Section 552.105(2) 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, 357 (1982), 310 (1982). Information pertaining to such negotiations excepted from disclosure under section 552.105 may be withheld so long as the transaction relating to the negotiations is not complete. *See* ORD 310. Under section 552.105, 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 negotiation position in regard to particular transactions is a question of fact. Thus, 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 remaining information pertains to the appraisal of a parcel of land the authority intends to acquire for a right-of-way. You explain that release of this information "will impair [the authority]'s planning and negotiating position with respect to [the] acquisition of [the] needed right-of-way, both from [the requestor] and from other landowners." Based on your representations and our review, we conclude the authority may withhold the remaining information under section 552.105 of the Government Code.

In summary, the authority must release the information we have marked under section 552.022(a)(1) of the Government Code. The authority may withhold the remaining information 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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal line extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/sdk

Ref: ID# 415883

Enc. Submitted documents

c: Requestor
(w/o enclosures)