



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2011

Ms. Margaret Ward
Shotts, Treviño & Guevara, L.L.P.
For City of Haskell
2237 Hillside Drive
San Angelo, Texas 76904

OR2011-05932

Dear Ms. Ward:

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# 415944.

The City of Haskell (the "city"), which you represent, received a request for documents reflecting correspondence between AEP/WTU and the city, as well as any other information referencing the power plant owned by AEP/WTU located on Lake Stamford. You claim the submitted e-mails and attachments are excepted from disclosure under sections 552.104, 552.105, 552.111, and 552.131 of the Government Code.¹ You also state release of the submitted information may implicate the proprietary interests of Consolidated Asset Management Services ("CAMS"), the Development Corporation of Haskell (the "DC"), and Schneider Engineering, Ltd. Thus, pursuant to section 552.305 of the Government Code, you notified these companies of the request and of their rights to submit arguments to this office as to why the information at issue should not be released. Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have received comments from CAMS and the DC. We have considered the submitted arguments and reviewed the submitted information.

¹We note, in your letter dated February 28, 2011, you withdrew your assertions under sections 552.101 and 552.137 of the Government Code.

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 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.

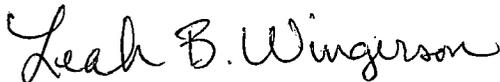
You explain the city created the DC pursuant to chapter 504 of the Local Government Code and, as the DC's authorizing unit, oversees the projects developed by the DC. *See* Local Gov't Code §§ 504.003 (municipality may authorize the creation of a Type A corporation); 501.054(b)(2) (with respect to project, corporation may exercise all powers necessary to effect purpose for which corporation is organized, subject to control of governing body of corporation's authorizing unit); 501.073(a) (corporation's authorizing unit will approve all programs and expenditures of a corporation). You inform us the DC is engaged in a project that involves the purchase of certain real property for public use. You state the acquisition of the subject property has not been publicly announced and has not been completed. You contend release of the submitted information would harm the DC's negotiating position with respect to the purchase of the property at issue. Based on your representations and our review of the information, we conclude the city may withhold the submitted e-mails and attachments under section 552.105 of the Government Code.²

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.

²As our ruling is dispositive, we need not address your remaining arguments, CAMS's arguments, or DC's arguments against disclosure.

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

Ref: ID# 415944

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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