ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2011

Mr. Riley Woods
Staff Counsel
Brazos River Authority
P.O. Box 7555
Waco, Texas 76714-7555

OR2011-06832

Dear Mr. Woods:

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# 417790.

The Brazos River Authority (the "authority") received a request for information provided to the authority in connection with the appraisal of specified commercial leases to be performed by a named third party. You claim the submitted information is excepted from disclosure under sections 552.105 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we understand the requestor to contend the authority failed to comply with section 552.301 of the Government Code for a previous request for the submitted information dated February 16, 2011, by failing to either release the responsive documents or request a ruling from this office. *See id.* § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). Thus, we understand the requestor to argue the submitted information should

be released pursuant to section 552.302 of the Government Code. *Id.* §§ 552.302. In its response to the requestor's contention, the authority explains the requestor clarified the previous request for information so as to exclude the submitted information. *See id.* § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request). The authority further states, and provides documentation showing, it released all information responsive to the requestor's clarified request for information. Whether the scope of the previous request for information was clarified and whether the information responsive to the clarified request was released are questions of fact. This office is unable to resolve disputes of fact in the open records ruling process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Accordingly, where an issue cannot be resolved as a matter of law, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. We note this office must rely on a governmental body to make a good-faith effort to determine what information is responsive to a request. *See* Open Records Decision No. 590 (1991). Accordingly, based on the authority's representation and information provided to this office, we conclude the authority believed the prior request was clarified, and released all information responsive to the clarified request. Therefore, we find the authority did not fail to comply with section 552.301 of the Government Code, and we will consider the authority's arguments against disclosure of the submitted information.

Section 552.105 of the Government Code excepts from disclosure information relating to the following:

> (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 state the submitted information relates to appraisals of real property the authority owns and leases for commercial and special use purposes. You state the authority is currently

evaluating its commercial leasing policies of the property in question, including renegotiation of lease rates and adoption of a new commercial lease rate methodology. You state the authority is still in the planning period of this process and has not yet adopted a new policy or entered into renegotiations of lease rates. Thus, you argue release of the submitted information at this time would impair the authority's planning and negotiation position with respect to the commercial leases at issue. We have no indication the authority has failed to make such a determination in good faith. The requestor argues section 552.105 applies to acquisition of property interests. Thus, we understand the requestor to argue section 552.105 is inapplicable to leasing situations. However, this office has held section 552.105 applies to leases as well as purchases of real estate. *See* Open Records Decision No. 348 (1982). Based on your representations and our review, we conclude the authority may withhold the submitted information under section 552.105 of the Government Code.[1]

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,

Laura Ream Lemus

Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/bs

Ref: ID# 417790

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[1]As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.