



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2011

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, TX 78701-2483

OR2011-13521

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# 430321.

The Texas Department of Transportation (the “department”) received two requests from the same requestor for right-of-way layout maps or right-of-way plans, project identification, and let dates for specified projects. You state the department does not possess some of the requested information.¹ You state the department is releasing some information to the requestor. 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 representative sample of information.²

¹We note the Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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

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. We note this provision 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 that is 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 pursuant to section 552.105 "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 submitted information pertains to the appraisal or purchase price of property sought to be purchased by the department as well as Travis and Hays counties (the "counties"), which are partners of the department. You explain, while the counties will handle the actual purchase transactions, the department will finance the purchases. Thus, based on your representations and our review of the submitted information, we find section 552.105 is applicable in this instance. Accordingly, we conclude the department 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

extent those records contain substantially different types of information than that submitted to this office.

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 'Ana Carolina Vieira', with a stylized flourish at the end.

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 430321

Enc. Submitted documents

c: Requestor
(w/o enclosures)