



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 25, 2011

Mr. Thomas Bailey  
Legal Services  
VIA Metropolitan Transit  
P.O. Box 12489  
San Antonio, Texas 78212

OR2011-15614

Dear Mr. Bailey:

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# 436374.

VIA Metropolitan Transit (the "VIA") received a request for seven categories of information pertaining to the requestor's property, including "other offers to purchase station sites along the new Bus Rapid Transit (BRT) line[.]" You state VIA has released some of the requested information, but claim 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.<sup>1</sup>

Initially, we note the submitted file labeled 5202 FredRd Appraisal & Summary.pdf is a completed appraisal report. Under section 552.022(a)(1) of the Government Code, a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted from disclosure under section 552.108 of the Government Code or is expressly confidential under other law. Gov't Code § 552.022(a)(1). Although you assert this information is excepted from disclosure under section 552.105 of

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<sup>1</sup>We 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.

the Government Code, this section is a discretionary exception under the Act and does not constitute “other law” for purposes of section 552.022. Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally); *cf.* Open Records Decision No. 564 at 2 (1990) (statutory predecessor to Gov’t Code § 552.105 “was designed to protect a governmental body’s planning and negotiating position with respect to particular transactions”). Accordingly, VIA may not withhold the submitted file labeled 5202 FredRd Appraisal & Summary.pdf under section 552.105, but instead must release it to the requestor.

You assert the remaining information is excepted from disclosure under section 552.105 of the Government Code. Section 552.105 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). 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 at 2, 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. But the protection offered by section 552.105 is not limited solely to transactions not yet finalized. This office has concluded information about specific parcels of land obtained in advance of other parcels to be acquired for the same project could be withheld where release of the information would harm the governmental body’s negotiating position with respect to the remaining parcels. *See* ORD 564 at 2. 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. 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.

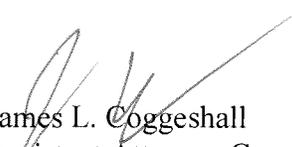
You inform us the requested information pertains to a project where sixteen stations are to be constructed along a specified route. You state when VIA received the request, VIA was still in negotiations related to fourteen of the stations. You also assert that, even though two of transactions have been closed, the requested information should not be released “until all of the sites have been acquired.” In addition, you state VIA has made a good-faith determination that the remaining information pertains to the appraisal or purchase price of real properties that VIA intends to purchase. Further, we understand you to assert the release of this information would harm VIA’s negotiations for purchase of the properties in question. Based on your representations, we conclude VIA may withhold the remaining information under section 552.105 of the Government Code.

To conclude, VIA must release the submitted file labeled 5202 FredRd Appraisal & Summary.pdf. VIA may withhold the remaining information pursuant to 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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/ag

Ref: ID# 436374

Enc. Submitted documents

c: Requestor  
(w/o enclosures)