



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2011

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, Suite 100
Conroe, Texas 77301

OR2011-18188

Dear Mr. Walker:

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# 438954.

Montgomery County (the "county") received a request for any information pertaining to the requestor's property and the attempt by the county to acquire property for the Woodlands Parkway Extension Project, including any valuations of land. You state a majority of the requested information has been released to the requestor. 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 information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note most of the submitted information in Exhibit B falls within the scope of 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 excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 2 (to be codified as an amendment to Gov't Code § 552.022(a)). With the exception of one document, Exhibit B consists of completed appraisal reports made for or by the county that are subject to disclosure under section 552.022(a)(1). You do not claim section 552.108 of the Government Code.

Although you assert this information is excepted from disclosure under section 552.105 of the Government Code, that exception is discretionary and does not make information confidential under the Act. *See id.* §§ 3-26, 28-37 (providing for “confidentiality” of information under specified exceptions); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the county may not withhold the completed appraisal reports in Exhibit B under section 552.105, but instead must release them to the requestor.

Next, we address your claim under section 552.105 of the Government Code for the remaining information in Exhibit B not subject to section 552.022(a)(1) of the Government Code. Section 552.105(2) 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 information in Exhibit B not subject to section 552.022(a)(1) pertains to a parcel of land the county intends to acquire for the specified project. You also state “negotiations are still being conducted for the prospective purchase of various parcels” and “four separate condemnation proceedings are currently pending for the acquisition of land.” You explain that release of this information would place the county at a great disadvantage because “property owners could demand a higher price for their property, regardless of its actual worth, based on what another property owner may have been offered or paid, thereby damaging the county’s negotiating ability with respect to the purchase of the remaining property to be acquired for the project.” Based on your representations and our review, we conclude the county may withhold the document in Exhibit B entitled “Eminent Domain Proceeding For: Parcel 35 – Woodlands Parkway Extension” on pages 61-62 under section 552.105 of the Government Code. The remaining submitted information must be released to the requestor pursuant to section 552.022(a)(1) 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 cursive script that reads "Sean Opperman".

Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 438954

Enc. Submitted documents

c: Requestor
(w/o enclosures)