



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 16, 2012

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

OR2012-05409

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# 450664.

The Texas Department of Transportation (the "department") received a request for information pertaining to the purchase of property in Travis County for SH 130, including purchase amount, owner, and other information that would identify the property. You 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> 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, the requestor contends the department did not timely respond to his request for information. Pursuant to section 552.301(d), the governmental body must provide the requestor, within ten business days after the date of its receipt of the request for information, a statement the governmental body has asked for a decision from the attorney general and a

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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 those submitted to this office.

copy of the governmental body's written communication to the attorney general asking for a decision. *See id.* § 552.301(d). You state, and provide documentation showing, the department received the present request for information on January 27, 2012. Thus, the department's ten-business-day deadline under subsection 552.301(d) was February 10, 2012. The envelope in which the department sent this office the information required under subsection 552.301(b) was received by this office via interagency mail on February 9, 2012. *See id.* § 552.308(b) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Additionally, the department's brief to this office contains a notation that the requestor was copied on the brief on that date. Whether the requestor was actually provided with a copy of the department's brief on February 9, 2012, is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See Open Records Decision No. 522 at 4 (1990)*. Therefore, we conclude the department complied with the procedural requirements of section 552.301 and will address its arguments against disclosure of the submitted information.<sup>2</sup>

Section 552.105 of the Government Code 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 respect to particular transactions. *Open Records Decision Nos. 564 at 2, 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*. But the protection offered by section 552.105 is not limited solely to transactions not yet finalized. This office has concluded that 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 (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*.

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<sup>2</sup>We note the requestor clarified his request. *See Gov't Code § 552.222(b)* (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

You state the department has made a good-faith determination that the information at issue relates to the appraisal or purchase price of real property the department intends to purchase. You explain the department still needs to purchase property in the area at issue and assert release of this information would harm the department's negotiating position with respect to the acquisition of this nearby property. You further explain the department is involved in eminent domain cases regarding purchase prices for some property involved in the project. Based on your representations and our review, we conclude the department may withhold the submitted information under 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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/em

Ref: ID# 450664

Enc. Submitted documents

c: Requestor  
(w/o enclosures)