



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2012

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2012-10433

Dear Mr. Ramirez:

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# 458301.

The Lower Colorado River Authority (the "LCRA") received a request for the land sale write-ups and work file used in connection with a specified appraisal and a schematic showing the route of a specified LCRA transmission line. You state the LCRA will release the requested schematic. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.104, 552.105, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or "made

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302, Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(1). The appraisal report completed for the LCRA, submitted as Exhibit D, is subject to section 552.022(a)(1) and must be released unless it is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. You do not claim section 552.108. Although you assert this information is excepted from disclosure under sections 552.103, 552.105, 552.107, and 552.111, these sections are discretionary and do not make information confidential under the Act. *See 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 section 552.103); Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 676 at 6 (2002) (attorney-client privilege under section 552.107 may be waived), 564 (1990) (statutory predecessor to section 552.105 subject to waiver), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the LCRA may not withhold the information subject to section 552.022 under section 552.103, section 552.105, section 552.107, or section 552.111. However, you also claim an exception under section 552.104 of the Government Code. Information encompassed by section 552.022(a)(1) may be withheld under section 552.104. *See* Gov’t Code § 552.104(b) (information protected by section 552.104 not subject to required public disclosure under section 552.022(a)). In addition, the Texas Supreme Court has held the Texas Rules of Civil Procedure and the Texas Rules of Evidence are “other law” that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will, therefore, consider your argument under section 552.104, and your assertions of the attorney-client privilege under Texas Rule of Evidence 503 and the attorney work product privilege under Texas Rule of Civil Procedure 192.5 for the information in Exhibit D. We will also consider your arguments under sections 552.103, 552.104, 552.105, 552.107, and 552.111 for the information not subject to section 552.022.

Section 552.104 of the Government Code excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been executed. *See* Open Records Decision No. 541 (1990). However, in some situations, section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to

section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids).

You explain the LCRA is in the process of acquiring property rights and purchasing easements for the transmission line project. You further explain the LCRA has finalized purchases from some landowners, but is still negotiating with other landowners. You state release of the submitted information would harm the LCRA by providing the property owners currently negotiating with the LCRA with advantageous information, thus placing the LCRA at a competitive disadvantage in its negotiations for the property rights and easements. Based on your representations and our review, we conclude the LCRA has demonstrated how release of the submitted information would harm its interests in a competitive situation. Accordingly, the LCRA may withhold the submitted information under section 552.104 of the Government Code. As our ruling is dispositive, we need not address the remaining arguments 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 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 458301

Enc. Submitted documents

c: Requestor
(w/o enclosures)