



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2012

Ms. Danielle R. Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-18605

Dear Ms. Folsom:

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# 471862 (GC No. 20004).

The City of Houston (the "city") received a request for four categories of information regarding a specified address. You state some of the requested information either has been or will be released. 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 information you submitted.

We first note some of the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(5) provides for required public disclosure of "all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]" unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(5). We find the submitted project cost projection is subject to disclosure under section 552.022(a)(5). Although you seek to withhold that information under sections 552.105 and 552.111 of the Government Code, those sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Open Records Decision Nos.665 at 2 n.5 (2000) (discretionary exceptions generally), 564 (1990) (statutory predecessor to Gov't Code § 552.105 subject to waiver), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 subject to waiver).

As such, sections 552.105 and 552.111 do not make information confidential for purposes of section 552.022(a)(5). Thus, the information in the submitted project cost projection may not be withheld under sections 552.105 or 552.111 of the Government Code. Therefore, as the city raises no other exception to disclosure of that information, the project cost projection must be released pursuant to section 552.022(a)(5) of the Government Code.

Next, we address your claim for the rest of the submitted information under section 552.105 of the Government Code, which excepts from disclosure information related 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. 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 that is 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. This office also 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. 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 negotiating 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 at 2.

You state the remaining information is related to planning for possible land acquisitions for a future capital improvement project. You inform us the city has made no public announcement regarding its eventual plans for the property to which the information pertains. You contend public disclosure of the remaining information could adversely affect the city's potential future plans for the property. Based on your representations and our review, we conclude the city may withhold the rest of the submitted information under section 552.105 of the Government Code.¹

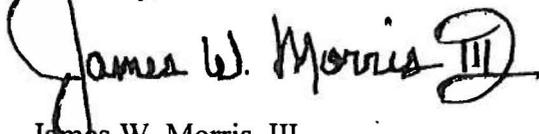
¹As we are able to make this determination, we need not address the other exception you claim.

In summary, the city (1) must release the submitted project cost projection pursuant to section 552.022(a)(5) of the Government Code and (2) may withhold the rest of 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, 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 black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 471862

Enc: Submitted documents

c: Requestor
(w/o enclosures)