



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2013

Ms. Rachel L. Lindsay
Counsel for the Town of Flower Mound
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-06153

Dear Ms. Lindsay:

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# 484010.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to the amount that was paid, and how that amount was determined, for the land used to build a specified water tower. 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 information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the request was received by the town. This ruling does not address the public availability of the information that is not responsive to the request, and the town is not required to release this information in response to this request.

Next, we note the submitted information contains an ordinance of the town council. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision No. 221 at 1 (1979) ("official records of the public proceedings of a governmental body are among the most open of records"); *see also* Open Records Decision No. 551 at 2-3 (1990) (laws or

ordinances are open records). Accordingly, the submitted ordinance, which we have marked, must be released.

We also note some of the remaining information, which we have marked, was published on the town's website. The Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. Gov't Code § 552.007(a); Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Although you seek to withhold this information under section 552.105 of the Government Code, that section does not prohibit the release of information or make it confidential under law. *See* Gov't Code § 552.007; 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). Thus, the town has waived its claim under section 552.105 for this previously released information and may not withhold it on the basis of section 552.105. As you raise no other exceptions for this information, it must be released.

Next, section 552.022 of the Government Code provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). The remaining information contains completed appraisal reports that are subject to section 552.022(a)(1) and court-filed documents that are subject to section 552.022(a)(17). Although you seek to withhold this information under section 552.105 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* ORDs 665 at 2 n.5, 564. Thus, the town may not withhold the information subject to section 552.022 under section 552.105 of the Government Code. As you raise no other exceptions to

disclosure for the information subject to section 552.022, which we have marked, it must be released. However, we will address your arguments under section 552.105(2) for the remaining information.

Section 552.105(2) 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.

You state the remaining information includes information regarding purchasing, valuation, and pricing information of real property. You further state the town has preliminary plans to include these properties in its public works project for the creation of the specified water tower. You assert release of this information would harm the town's negotiating position with respect to the acquisition of these properties. Based on your representations and our review, we conclude the town may withhold the information we have marked under section 552.105 of the Government Code. However, we find you have failed to demonstrate how release of the remaining information would impair the town's planning and negotiating position with regard to the water tower project. Therefore, none of the remaining information may be withheld under section 552.105 of the Government Code.

In summary, the town may withhold the information we have marked under section 552.105 of the Government Code. The remaining responsive information must be released.

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, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 484010

Enc. Submitted documents

c: Requestor
(w/o enclosures)