



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2013

Mr. Kyle T. Gray
For Tarrant Regional Water District
Pope, Hardwicke, Christie,
Schell, Kelly & Ray, L.L.P.
500 West 7th Street, Suite 600
Fort Worth, Texas 76102

OR2013-08446

Dear Mr. Gray:

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# 487904.

The Tarrant Regional Water District (the "district"), which you represent, received a request for all offers or proposals to, and contracts or agreements with, landowners, related to real property sought to be acquired by the district, or any of its affiliates or subsidiaries, in connection with the portion of the Integrated Pipeline Project between Lake Palestine and the Cedar Creek Reservoir.¹ You claim the requested 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.²

Initially, we note the requestor specifically excludes from the scope of the request information that pertains to the negotiations between the district and landowners, information that identifies names of the landowners, and appraisals on real property acquired or sought

¹You inform us, and provide documentation showing, the requestor made, but then voluntarily withdrew, a request for correspondences between the district and landowners.

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

to be acquired. Accordingly, these types of information are not responsive to the instant request. This ruling does not address the public availability of non-responsive information, nor is the district required to release non-responsive information to this requestor.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Id. § 552.022(a)(3). Tab 4 consists of contracts relating to the expenditure of funds by the district and is, thus, subject to subsection 552.022(a)(3). Although you raise section 552.105 of the Government Code, this section is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally), 564 (1990) (statutory predecessor to section 552.105 subject to waiver). As such, section 552.105 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the district may not withhold the information in Tab 4 under section 552.105. However, we will address the applicability of section 552.105 for the remaining information, which is not subject to section 552.022.

Section 552.105 of the Government Code excepts from disclosure information relating 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. We note this provision is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. *See* Open Records Decision Nos. 564 (1990), 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. 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)). 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. 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 district is in the process of acquiring certain interests in real property necessary to facilitate the eventual completion of the Integrated Pipeline Project. You state the requested information relates to the purchase price and location of real property for a public purpose. You assert the district has made a good-faith determination that release of this information would impair the district's negotiating position with respect to the acquisition of these properties. Based on your representations and our review, we conclude the district may withhold the remaining information at issue under section 552.105 of the Government Code.

In summary, the district must release the information in Tab 4 pursuant to section 552.022(a)(3) of the Government Code. The district may withhold the remaining information pursuant to 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

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Enc. Submitted documents

c: Requestor
(w/o enclosures)