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ATTORNEY GENERAL OF TEXAS

October 17, 2016

Mr. Matthew K. Behrens
Assistant General Counsel
Office of General Counsel
El Paso Water Utilities - Public Service Board
P.O. Box 511
El Paso, Texas 79961-0511

OR2016-23227

Dear Mr. Behrens:

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# 630837.

The El Paso Water Utilities Public Service Board (the "board") received a request for information related to a certain potential acquisition of the board.¹ You claim the submitted information is excepted from disclosure under sections 552.105 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 (1990), 357 (1982), 310 (1982). Information excepted from disclosure under section 552.105 that pertains to such

¹You state the board sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

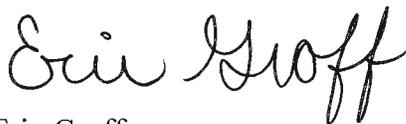
negotiations may be excepted from disclosure so long as the transaction relating to that information is not complete. *See* ORD 310. A governmental body may withhold information “which, if released, would impair or tend to impair [its] ‘planning and negotiating position in regard to particular transactions.’” 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 board secures water rights for the city of El Paso through the purchasing of real property. You argue the information in Exhibits D and E pertain to the valuation of real property proposed to be purchased by the board. You state negotiations for purchase of the specified real property have begun, but have not yet been finalized. You further state the release of the information at issue would harm the board’s negotiating position for the acquisition. We understand the board has made a good-faith determination that release of this information would impair the board’s position in regard to the transaction in question. Based on your representations and our review, we conclude the board may withhold Exhibits D and E under section 552.105 of the Government Code.²

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Erin Groff
Assistant Attorney General
Open Records Division

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²As our ruling is dispositive, we need not consider the board’s remaining argument against disclosure.

Ref: ID# 630837

Enc. Submitted documents

c: Requestor
(w/o enclosures)