



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 24, 2016

Mr. Justin S. Light
Counsel for the Tarrant Regional Water District
Pope, Hardwicke, Christie, Schell, Kelly & Ray, L.L.P.
500 West Seventh Street, Suite 600
Fort Worth, Texas 76102

OR2016-23809

Dear Mr. Light:

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# 631450.

The Tarrant Regional Water District (the "district"), which you represent, received a request for nine categories of information concerning an easement over and across a specified property and a proposed water pipeline. You state the district has released some information. You claim the submitted information is excepted from disclosure under sections 552.103, 552.104, and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). You represent Exhibit F pertains to a competitive bidding situation. In addition, you explain release of the construction plans

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

submitted as Exhibit F would undermine the proposal and negotiation process regarding pipeline construction. Further, you state release of Exhibit F would place the district at a competitive disadvantage in selecting the most competitive bid. After review of the information at issue and consideration of the arguments, we find the district has established the release of Exhibit F would give advantage to a competitor or bidder. Thus, we conclude the district may withhold Exhibit F under section 552.104(a) of the Government Code.²

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 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 indicate the district has made a good-faith determination that the information in Exhibit G relates to the appraisal or purchase price of real property the district intends to purchase. You explain the district still needs to purchase property in the area at issue, and release of this information would harm the district’s negotiating position with respect to the acquisition of these nearby properties. Based on your representations and our review, we conclude the district may withhold Exhibit G under section 552.105 of the Government Code.³

In summary, the district may withhold Exhibit F under section 552.104(a) of the Government Code. The district may withhold Exhibit G under section 552.105 of the Government Code.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,

A handwritten signature in black ink, appearing to read "Ian Lancaster", written in a cursive style.

Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 631450

Enc. Submitted documents

c: Requestor
(w/o enclosures)