



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 14, 2017

Mr. Ignacio Perez  
Counsel for the City of Lakeway  
Bojorquez Law Firm, P.C.  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2017-18456

Dear Mr. Perez:

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# 670999.

The City of Lakeway (the "city"), which you represent, received a request for written memoranda of understanding between the city and two named parties and specified contracts. You state you do not have some of the requested information.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.105 and 552.110 of the Government Code.<sup>2</sup> You also state the release of the information may implicate the proprietary interests of HSD-Lakeway Holdings, Ltd ("HSD"). Accordingly, you state, and

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We note the city did not raise section 552.110 of the Government Code until after the ten-business-day deadline passed, and thus, failed to comply with the procedural requirements of section 552.301 of the Government Code with respect to section 552.110. *See Gov't Code* § 552.301(b). Nonetheless, section 552.110 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* §§ 552.007, .302. Therefore, we will address the city's assertions under this exception.

provide documentation showing, you notified HSD of the request and its right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We considered the exceptions you claim and reviewed the submitted information.

Section 552.105 of the Government Code excepts from disclosure information relating to:

- (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)). 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 submitted information relates to a pending real estate transaction, and disclosing that information would adversely affect negotiations in the pending real estate transaction. You state release of the submitted information would effect the purchase price of the property and reveal the location of the property. You state there have been no award of contracts for the property. Based on your representations and our review, we find section 552.105 is applicable in this instance. Accordingly, we conclude the city may withhold the information you marked pursuant to section 552.105 of the Government Code.<sup>3</sup>

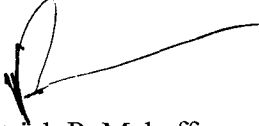
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

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](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,



Patrick P. Mehaffy  
Attorney  
Open Records Division

PPM/eb

Ref: ID# 670999

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)