



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 17, 2017

Mr. Michael Shaunessy
Counsel for City of Hutto
McGinnis Lochridge
600 Congress Avenue, Suite 2100
Austin, Texas 78701

OR2017-23811

Dear Mr. Shaunessy:

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# 680611.

The City of Hutto (the "city"), which you represent, received a request for impact studies, analyses, or audits regarding the purchase of a specified water utility system. You claim the submitted information is excepted from disclosure under sections 552.104, 552.105, 552.107, 552.110, and 552.111 of the Government Code.¹ Additionally, you state release of this information may implicate the proprietary interests of R.W. Harden and Associates ("Harden"). Accordingly, you state, and provide documentation showing, you notified Harden of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *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 have

¹We note the city did not timely raise the attorney-client privilege in accordance with section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). However, because the attorney-client privilege can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider the applicability of section 552.107 of the Government Code to the submitted information. *See id.* §§ 552.007, .302, .352.

considered the exceptions you claim and reviewed the submitted representative sample of information.²

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(1)-(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. However, 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 may 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 city has made a good-faith determination the submitted information relates to the acquisition of property, and release of the information would damage the city's negotiating position. You explain the city "is in the midst of a potential purchase of a water utility system" and information "relating to the ongoing negotiations and due diligence should be held confidential until the actual agreement is consummated or the project no longer exists as a viable option for [the city]." Based on your representations and our review,

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.

we conclude the city may withhold the submitted information under section 552.105 of the Government Code.³

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/gw

Ref: ID# 680611

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)

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