



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 18, 2017

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

OR2017-23886

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# 681871.

The City of Hutto (the "city"), which you represent, received a request for several categories of information pertaining to the Williamson County Long-Range Transportation Plan. You state you have released most of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.104, 552.105, 552.111, 552.117, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.105 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.

¹We understand you to raise section 552.137 of the Government Code based on your markings.

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. 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 some of the submitted information pertains to the city's planned real estate acquisition of certain parcels of land for public purposes. You argue the release of this information would harm the city's ongoing negotiating position during the acquisition of this land. We understand the city has made a good faith determination that release of this information would harm the city's negotiating position with respect to the acquisition of the property at issue. Based on your representations and our review, we find section 552.105 is applicable to the information at issue. Therefore, the city may withhold the information you marked under section 552.105 of the Government Code.²

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and information that reveals whether an individual has family members for current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a). You assert a portion of the remaining information is confidential under section 552.117(a)(1). However, upon review, we find section 552.117 of the Government Code is not applicable to the e-mail address you have indicated, and the city may not withhold the information e-mail address at issue on this basis.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). You seek to withhold the private e-mail address of a government official who used her private e-mail address to conduct official government business. However, in *Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.), the court concluded section 552.137 does not except from disclosure the private e-mail addresses of government

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

officials who use their private e-mail addresses to conduct official government business. *Id.* at 250. Therefore, upon review, we find you have failed to demonstrate the e-mail address at issue is excepted under section 552.137. Accordingly, the city may not withhold the information at issue on this ground.

In summary, the city may withhold the information you marked under section 552.105 of the Government Code. The city must release the remaining 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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/tdw

Ref: ID# 681871

Enc. Submitted documents

c: Requestor
(w/o enclosures)