



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 19, 2017

Ms. Sarah Parker
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2017-24039

Dear Ms. Parker:

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# 680694.

The Texas Department of Transportation (the "department") received a request for information pertaining to the acquisition of several specified pieces of land. The department claims the submitted information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception the department claims and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

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.

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(3), (5). The submitted information includes information in an account, contract, or voucher relating to the receipt or expenditure of funds by the department that is subject to section 552.022(a)(3) and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate that is subject to section 552.022(a)(5). This information, the types of which we have marked, must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3), (5). The department seeks to withhold the information subject to section 552.022 under section 552.105 of the Government Code. However, section 552.105 is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 564 (1990) (statutory predecessor to section 552.105 subject to waiver). Therefore, the department may not withhold the information subject to section 552.022 under section 552.105 of the Government Code. Nevertheless, because section 552.136 of the Government Code makes information confidential under the Act, we will consider the applicability of section 552.136 for the information at issue.² We will also consider the department's argument under section 552.105 for the information not subject to section 552.022.

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, 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.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.

The department states it has made a good-faith determination that the information at issue relates to the appraisal or purchase price of real property the department intends to purchase. The department explains it still needs to purchase property in the area at issue, and release of this information would harm the department’s negotiating position with respect to the acquisition of this nearby property. Based on these representations and our review, we conclude with the exception of the information subject to section 552.022 of the Government Code, the department may withhold the submitted information under section 552.105 of the Government Code.

Portions of the information subject to section 552.022(a)(3) of the Government Code are protected by section 552.136 of the Government Code. Section 552.136 provides, “Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the department must withhold bank account numbers, the types of which we have marked, under section 552.136 of the Government Code.

In summary, with the exception of the information subject to section 552.022 of the Government Code, the department may withhold the submitted information under section 552.105 of the Government Code. In releasing the types of information subject to section 552.022 of the Government Code, which we marked, the department must withhold the types of bank account numbers we marked under section 552.136 of the Government Code.

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 "Kaelan A. Henze". The signature is fluid and cursive, with the first name "Kaelan" being the most prominent part.

Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/gw

Ref: ID# 680694

Enc. Submitted documents

c: Requestor
(w/o enclosures)