



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 15, 2017

Mr. Jon Thatcher  
City Attorney  
City of Forney  
P.O. Box 826  
Forney, Texas 75126

OR2017-26108

Dear Mr. Thatcher:

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# 684286.

The City of Forney (the "city") received a request for communications between specified city officials for a period of time. You state you will release some information. You claim the submitted information is excepted from disclosure under sections 552.105 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. 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 information you marked relates to the location of certain property the city is contemplating purchasing for a public purpose. You explain the city has been in negotiations with the seller of the property and all discussions regarding the property have been kept confidential. We understand the city has made a good-faith determination that release of this information would impair or tend to impair the city's planning and negotiating position in regard to the transaction in question. Based on your representations and our review, we conclude the city may withhold the information we marked under section 552.105 of the Government Code. However, we find you have not demonstrated any of the remaining information at issue pertains to the location, appraisal, or purchase price of real or personal property for a public purpose. Accordingly, the city may not withhold any of the remaining information under section 552.105 of the Government Code.

Section 552.131(b) of the Government Code provides:

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(b). Section 552.131(b) of the Government Code protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. Gov't Code § 552.131(b). You state the information you have marked is related to a pending business project or prospect. Further, you state the city is in the process of negotiating an incentive agreement with the business prospect. Thus, we find the information you marked consists of information about financial or other incentives being offered to a business prospect by the city. Accordingly, the city may withhold the information you marked under section 552.131(b) of the Government Code.

Some of the remaining information may be subject to section 552.117 of the Government Code.<sup>1</sup> Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See See id.* § 552.117(a)(1). Section 552.117 is applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the city must withhold the information we marked under section 552.117(a)(1); however, the cellular telephone number may only be withheld if a governmental body does not pay for the cellular telephone service.

In summary, the city may withhold the information we marked under section 552.105 of the Government Code. The city may withhold the information you marked under section 552.131(b) of the Government Code. If the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the city must withhold the information we marked under section 552.117(a)(1); however, the cellular telephone number may only be withheld if a governmental body does not pay for the cellular telephone service. 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/>

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<sup>1</sup>The 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)*.

[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 cursive script, appearing to read "D. Michelle Case".

D. Michelle Case  
Attorney  
Open Records Division

DMC/som

Ref: ID# 684286

Enc. Submitted documents

c: Requestor  
(w/o enclosures)