



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 1, 2018

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

OR2018-02324

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# 691984.

The Texas Department of Transportation (the "department") received a request for all closing statements, purchase agreements, and comparable sales and appraisals related to the purchase or sale of four specified real properties in Bexar County. You claim the submitted information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We 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.

Initially, we note a portion of the submitted information is subject to section 552.022(a) of the Government Code, which provides, in part, the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

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

Gov't Code § 552.022(a)(3). The submitted closing statement and title policy we marked are subject to section 552.022(a)(3). Although you assert this information is excepted from release under section 552.105 of the Government Code, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 564 (1990) (statutory predecessor to section 552.105 subject to waiver); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the department may not withhold the information subject to section 552.022(a)(3) under sections 552.105. However, we note a portion of the information at issue is subject to section 552.136 of the Government Code which makes information confidential under the Act.<sup>2</sup> Therefore, we will consider the applicability of section 552.136 to the information subject to section 552.022(a)(3). Additionally, we will consider your argument under section 552.105 for the information not subject to section 552.022(a)(3).

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 (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. 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

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<sup>2</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. *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 state the department has made a good-faith determination the information not subject to section 552.022(a)(3) of the Government Code relates to the location of property it intends to purchase and information that would affect the prices of parcels that have yet to be purchased. You explain the department still needs to purchase property in the area at issue, and release of the information at issue would harm the department's negotiating position with respect to the acquisition of this property. Based on your representations and our review, we conclude the department may withhold the information not subject to section 552.022(a)(3) of the Government Code under section 552.105 of the Government Code.

Section 552.136 states "[n]otwithstanding any other provision of this chapter, 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." *Id.* § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the department must withhold the insurance policy number we marked under section 552.136 of the Government Code.

In summary, we marked the information subject to Government Code 552.022(a)(3) that must be released; however, in releasing this information, the department must withhold the information we marked under section 552.136 of the Government Code. The department may withhold the remaining information under 552.105 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](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 "Ramsey A. Abarca", with a long horizontal flourish extending to the right.

Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/gw

Ref: ID# 691984

Enc. Submitted documents

c: Requestor  
(w/o enclosures)