



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 17, 2019

Mr. Robert Blumenfeld  
Counsel for the El Paso Housing Authority  
Mendel Blumenfeld, P.L.L.C.  
5809 Acacia Circle  
El Paso, Texas 79912

OR2019-29237

Dear Mr. Blumenfeld:

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# 790407.

The Housing Authority of the City of El Paso (the "authority"), which you represent, received a request for five categories of information pertaining to a specified authority board of commissioners meeting agenda item. We understand the authority does not have some of the requested information.<sup>1</sup> You state the authority will release some information. You claim the submitted information is excepted from disclosure under sections 552.105 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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

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<sup>1</sup> The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

<sup>2</sup> We 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 that those records contain substantially different types of information than that submitted to this office.

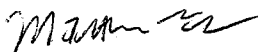
(1982). Information that is excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted from disclosure so long as the transaction relating to that information is not complete. See ORD 310. But the protection offered by section 552.105 is not limited solely to transactions not yet finalized. This office has held that section 552.105 applies to leases as well as purchases of real estate. See Open Records Decision No. 348 (1982). 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 submitted information relates to the appraisal or purchase price of real property the authority is considering purchasing. Further, you state there “has been no agreement reached and no contracts executed with respect to the property listed in the [a]genda [i]tem.” We understand the authority has made a good-faith determination release would harm its negotiating position. Based on your representations and our review, we conclude the authority may withhold the submitted information under section 552.105 of the Government Code.<sup>3</sup>

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/rm

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<sup>3</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

Mr. Robert Blumenfeld - Page 3

Ref: ID# 790407

Enc. Submitted documents

c: Requestor  
(w/o enclosures)