



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 23, 2020

Ms. Tammye Curtis-Jones
Office of General Counsel
Houston Housing Authority
2640 Fountain View Drive
Houston, Texas 77057

OR2020-11589

Dear Ms. Curtis-Jones:

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# 824165.

The Houston Housing Authority (the "authority") received a request for all earnest money contracts and final contracts for real estate property held for a specified period of time. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes information subject to section 552.022 of the Government Code. Section 552.022 provides in part:

(a) 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). Some of the information at issue consists of information in an account, voucher, or contract relating to the receipt or expenditure of public or other

funds by the authority. The authority seeks to withhold the information subject to section 552.022 under sections 552.103 and 552.105 of the Government Code. However, sections 552.103 and 552.105 are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S. W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code §552.103); *see also* 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 authority may not withhold the information subject to section 552.022, which we marked, under section 552.103 or section 552.105 of the Government Code. However, we will consider the authority's arguments against release of the remaining information.

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 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 information not subject to section 552.022 relates to the location of real property the authority intends to acquire for a public purpose. You assert the release of this information would damage the authority's planning and negotiating positions with respect to the acquisition of property needed for the project. Based on your representations and our review, we conclude the authority may withhold the information not subject to section 552.022 under section 552.105 of the Government Code.¹

In summary, the authority must release the information we marked pursuant to section 552.022(a)(3) of the Government Code. The authority may withhold the remaining information under section 552.105 of the Government Code.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this 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 <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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/rm

Ref: ID# 824165

Enc. Submitted documents

c: Requestor
(w/o enclosures)