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ATTORNEY GENERAL OF TEXAS

September 4, 2020

Mr. Rodrigo J. Figueroa
Counsel for the Alamo Trust, Inc.
Dykema Gossett PLLC
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205

OR2020-22453

Dear Mr. Figueroa:

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# 842996.

The Alamo Trust, Inc. (the "trust"), which you represent, received a request for a specified appraisal report. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.105 of the Government Code. You also state you notified the Texas General Land Office (the "GLO") of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the GLO. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would "harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future." *Id.* § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). You explain the trust assists the GLO in the preservation, management, education, maintenance, operation, and restoration of The Alamo. You state the submitted documents pertain to negotiations regarding the trust formalizing permanent title to historical items on loan to the trust. You argue release of the information at issue would

provide a competitive advantage to sellers of the items on loan in the event the trust is unsuccessful in formalizing permanent title as disclosure of the valuations reflected within the submitted documents would create artificially high values for historical items. Based upon your representations, we understand the trust to argue it has specific marketplace interests with respect to the information at issue. We find the trust has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find you have demonstrated release of some of the submitted information would give advantage to a competitor or bidder. Accordingly, the trust may withhold the information we marked under section 552.104(a).¹ However, we find you and the GLO have failed to demonstrate the applicability of section 552.104 to the remaining information. Thus, we conclude the trust may not withhold the remaining information under section 552.104(a) of the Government Code.

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. 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. Upon review, we find you and the GLO have failed to demonstrate the remaining information at issue is subject to section 552.105 of the Government Code. Thus, we conclude the trust may not withhold any of the remaining information under section 552.105 of the Government Code.

In summary, the trust may withhold the information we marked under section 552.104(a) of the Government Code. The trust 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/mo

Ref: ID# 842996

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Interested Party
(w/o enclosures)