



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 25, 2020

Mr. Christopher L. Jensen
Counsel for the Canadian River Municipal Water Authority
Sprouse, Shrader & Smith, P.L.L.C.
701 South Taylor, Suite 500
Amarillo, Texas 79101

OR2020-24198

Dear Mr. Jensen:

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# 846027.

The Canadian River Municipal Water Authority (the "authority"), whom you represent, received a request for eight types of information related to a specified authority project.¹ You claim some of the submitted information is excepted from disclosure under sections 552.105 and 552.153 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We note a portion of the information at issue is subject to section 552.022(a)(3) of the Government Code, which provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

¹ You state the authority sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² 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 those records contain substantially different types of information than that submitted to this office.

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 authority seeks to withhold the information subject to section 552.022(a)(3) of the Government Code under sections 552.105 and 552.153 of the Government Code. However, sections 552.105 and 552.153(b)(1) of the Government Code are discretionary in nature and do not make information confidential under the Act. *See* 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); *see also* Gov't Code § 552.153(b)(1) (providing for the withholding of certain information relating to a proposal for a qualifying project under chapter 2267 of the Government Code if release would harm the governmental body's financial interests or bargaining position), (2)(C) (providing for the withholding of certain information provided by a contracting party under chapter 2267 if release before the execution of an interim or comprehensive agreement would harm the governmental body's financial interests or bargaining position). Therefore, the authority may not withhold the information at issue, which we marked for release, under section 552.105 or section 552.153 of the Government Code. However, we will consider your arguments under section 552.105 and section 552.153 for the information not subject to section 552.022.

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, 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 authority has made a good-faith determination the information at issue 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 authority still needs to purchase property in the area at issue, and release of the information at issue would harm the authority's negotiating position with respect to the acquisition of this property. Based on your representations and our review, we conclude the authority may withhold the remaining information you marked under section 552.105 of the Government Code.³

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 you marked under section 552.105 of the Government Code. The authority 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 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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/jxd

Ref: ID# 846027

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.