



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 2, 2020

Mr. Juan Gonzalez
Assistant General Counsel
El Paso Water Utilities – Public Service Board
P.O. Box 511
El Paso, Texas 79961-0511

OR2020-27477

Dear Mr. Gonzalez:

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# 851048.

The El Paso Water Utilities – Public Service Board (the “board”) received a request for information pertaining to a specified appraisal and presentation. You state the board released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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. 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 assert the submitted information relates to the appraisal or purchase price of real property the board intends to sell. You state release of the information at issue prior to completion of the transaction would impair the board's negotiating position with respect to sale of the property at issue. We understand the board has made a good-faith determination release would harm its negotiating position. Based on your representations and our review, we conclude the board may withhold the submitted information under section 552.105 of the Government Code.¹

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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/gw

Ref: ID# 851048

c: Requestor

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