



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 23, 2020

Mr. Ryan Pittman
Counsel for the City of Melissa
Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75069

OR2020-29363

Dear Mr. Pittman:

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# 855114.

The City of Melissa (the "city"), which you represent, received two requests from the same requestor for information related to the construction of a specified facility.¹ You claim the submitted information is excepted from disclosure under sections 552.105 and 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence.² Additionally, you state release of the submitted information may implicate the proprietary interests of Explorer Pipeline Company ("Explorer") and U.S. Venture, Inc. ("Venture"). Accordingly, you state, and provide documentation showing, you notified Explorer and

¹ The city informs us it sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). The city informs us it received the required deposit on September 4, 2020. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

² Although you also raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

Venture of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Explorer and Venture. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments 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.” *Id.* § 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 city intends to sell. You state release of the information at issue prior to completion of the transaction would impair the city’s negotiating position with respect to sale of the property at issue. We understand the city has made a good-faith determination release would harm its negotiating position. Based on your representations and our review, we conclude the city may withhold the submitted information under section 552.105 of the Government Code.³

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

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the information at issue.

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,

Sean McCormick
Assistant Attorney General
Open Records Division

SMC/gw

Ref: ID# 855114

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 2 Third Parties
(w/o enclosures)