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ATTORNEY GENERAL OF TEXAS

April 26, 2022

Mr. Matt McPhail
Counsel for the SH130 Municipal Management District No. 1
Winstead, P.C.
401 Congress Avenue, Suite 2100
Austin, Texas 78701

OR2022-11933

Dear Mr. McPhail:

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# 943000.

The SH130 Municipal Management District No. 1 (the "district"), which you represent, received a request for seven categories of information, including certain information pertaining to public meetings, certain agreements and resolutions, and certain information pertaining to the Texas Essential Housing Public Facility Commission. You state the district will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted on behalf of the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion that the district failed to comply with section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Id.* § 552.301(e). Section 552.301(e-1) provides a governmental body shall send a copy of its comments to the requestor not later than the fifteenth business day after the date of receiving the written request and must redact any information disclosing the substance of

the requested information from the copy of the comments provided to the requestor. *See id.* § 552.301(e-1).

The requestor asserts “the [d]istrict has redacted almost all of the argument” in the copy of the district’s comments provided to the requestor pursuant to section 552.301(e-1). We note the district’s letter submitted to this office pursuant to section 552.301(e)(1)(A) contains a notation indicating the requestor was copied on the letter. Additionally, we note the requestor has not submitted to our office the copy of the letter she received from the district pursuant to section 552.301(e-1). Whether the letter sent from the district to the requestor was properly redacted pursuant to section 552.301(e-1) is a question of fact. This office cannot resolve factual disputes in the opinion process. *See Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986).* Where a fact issue is not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See ORD 552 at 4.* As noted above, the information submitted by the district pursuant to section 552.301(e)(1)(A) reflects the requestor was copied on the letter to our office concurrent with its delivery to our office. Therefore, we conclude the district complied with the requirements of section 552.301(e-1) of the Government Code. Thus, we will address the district’s argument against disclosure of the information at issue.

Next, we note the requestor asserts the submitted information is subject to section 552.0222 of the Government Code. Section 552.0222(a) provides, “[c]ontracting information is public and must be released unless excepted from disclosure under this chapter.” Gov’t Code § 552.0222(a); *see also id.* § 552.003 (defining “contracting information” for purposes of the Act). Section 552.0222(b) provides certain types of contracting information may not be withheld under sections 552.110 or 552.1101 of the Government Code. *See id.* § 552.0222(b). Upon review, we find the requestor has failed to establish the submitted information consists of contracting information subject to section 552.0222 of the Government Code. Additionally, we note the district did not raise either section 552.110 or section 552.1101 of the Government Code. *See id.* § 552.0222(a). Therefore, we will address the district’s argument under section 552.105 of the Government Code.

Section 552.105 of the Government Code excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) 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. We note this provision is designed to protect a governmental body’s planning and negotiating position with regard to particular transactions. *See Open Records Decision Nos. 564 (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.* Under section 552.105, 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. Thus, 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 explain the submitted information consists of a draft memorandum of understanding and a draft resolution pertaining to “the potential annexation of property into the [d]istrict[,] and includes detailed exhibits and maps establishing the boundaries for the proposed agreement.” You state “the development deal has temporarily been placed on hold and [the] annexation of property into the [d]istrict . . . has not occurred.” You assert release of the information at issue would “damage [the district’s] negotiating position with respect to future agreements with similarly situated properties and developers.” Thus, we understand you have made a good faith determination that release of this information would impair the district’s planning and negotiating position in regard to the transaction in question. Based on your representations and our review, we conclude the district may withhold the submitted information under section 552.105 of the Government Code.

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/be

Ref: ID# 943000

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Interested Third Party
(w/o enclosures)