



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 29, 2022

Mr. Ryan Brooke  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2022-26097

Dear Mr. Brooke:

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# 969086 (Ref. No. G000683).

The City of Lubbock (the "city") received a request for (1) the comprehensive operational analysis for a specified request for proposals; (2) the facility feasibility study for a specified request for proposals; and (3) a specified contract. You state the city does not have information responsive to the first category of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.105, 552.106, 552.111, and 552.136 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> Although the city also raises section 552.101 of the Government Code, the city has not provided any arguments to support this exception. Therefore, we assume the city has withdrawn its claim this section applies to the submitted information. See Gov't Code §§ 552.301, .302.

Section 552.105 of the Government Code excepts from disclosure information relating to “the location of real or personal property for a public purpose prior to public announcement of the project.” Gov’t Code § 552.105(1). 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 state Exhibit B-1 relates to the locations of real properties the city intends to acquire for a public purpose. We understand the city has made a good faith determination that release of this information would damage the city’s planning and negotiating position with respect to the acquisition of properties needed for the project at issue. Based upon your representations and our review, we conclude the city may withhold Exhibit B-1 under section 552.105 of the Government Code.<sup>3</sup>

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the insurance policy numbers in Exhibit B-2 under section 552.136 of the Government Code.

In summary, the city may withhold Exhibit B-1 under section 552.105 of the Government Code. The city must withhold the insurance policy numbers in Exhibit B-2 under section 552.136 of the Government Code. The city 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.

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,

Sarah E. Reese  
Attorney  
Open Records Division

SER/jxd

Ref: ID# 969086

Enc. Submitted documents

c: Requestor  
(w/o enclosures)