



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

June 10, 1974

The Honorable Andy James, Administrator
Texas Real Estate Commission
4th Floor, Archives & Library Bldg.
P.O. Box 12188, Capitol Station
Austin, Texas 78711

Open Records Decision No. 36

Re: Investigative Records of
the Real Estate Commission

Dear Mr. James:

Pursuant to the Open Records Act, Article 6252-17a, § 7 (a), V. T. C. S., the Texas Real Estate Commission (TREC) has requested our decision on whether a real estate broker under investigation for alleged "misrepresentations" in violation of the Texas Real Estate License Act, Article 6573a, V. T. C. S., may have access to pertinent files of the Commission prior to an administrative hearing that has been called.

It is our opinion that a significant portion of the documents which you forwarded to us must be made available to the broker under investigation, without reference to the Open Records Act, in order that the minimum requirements of the due process clause of the 14th Amendment to the Federal Constitution be met. We reach this conclusion because: (1) an adverse decision by TREC would result in a revocation of the broker's license and prohibit him from carrying on his chosen profession; (2) the opportunity for continued employment, under the circumstances here presented, is a protected right within the meaning of the 14th Amendment's guarantee that no person shall be deprived of "liberty or property" without due process of law, Fitzgerald v. Hampton, 467 F. 2d 755 (C.A.D. C. 1972); (3) the Supreme Court has specified that an essential element of the due process requirement is that documentary evidence pertinent to the facts in controversy before an administrative agency must be disclosed, Greene v. McElroy,

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360 U.S. 474 (1959); Goldberg v. Kelley, 397 U.S. 254 (1970); and, (4) the holding in Greene v. McElroy, *supra*, has been made applicable to the states through the 14th Amendment due process clause.

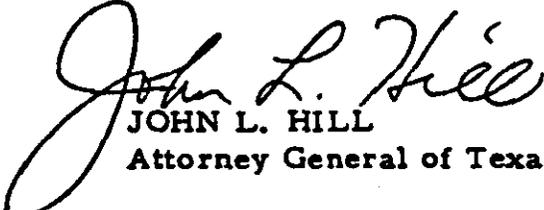
In Greene v. McElroy, *supra*, Chief Justice Warren, speaking for the Court, said:

Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. (Emphasis added) (360 U.S. at 496)

We therefore decide that those documents containing evidence directly pertaining to the charges against the broker who faces the upcoming administrative hearing should be made available to him. The availability of these documents to the requesting party under the 14th Amendment makes it unnecessary to determine whether they would also be available to the public under the Open Records Act.

It is the opinion of this office that the remaining documents do not fall within any of the exceptions to the Open Records Act. See, Section 3(a) (1), (3), (7), (8), and (11).

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


C. J. CARL, Staff Legislative Assistant


DAVID M. KENDALL, Chairman
Opinion Committee