

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2005

Mr. John M. Renfrow
Assistant County Attorney
Harris County Attorney's Office
P.O. Box 920975
Houston, Texas 77292-0975

OR2005-05953

Dear Mr. Renfrow:

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# 227693.

The Harris County Appraisal District (the "district") received a request for five categories of information related the computer systems used to "appraise properties, determine market value, and/or equalize appraisals in Harris County, Texas, for tax years from 1999 to date." You argue that portions of the information are not subject to disclosure under the Act. Alternatively, you indicate that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments. We have also received and considered comments submitted by the requestor's husband. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We note that you do not assert that portions of the requested information, specifically the information responsive to item numbers three and five of the request, are not subject to the Act. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to these items of the request existed on the date the district received the instant request, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we must address the district's obligations under the Act. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). You did not submit the information you assert is not subject to disclosure under the Act.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994).

In Open Records Decision No. 581 (1990), this office determined that certain computer information such as source codes, documentation information, and other computer programming that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information that is made public under section 552.021 of the Act. Open Records Decision No. 581 (1990) (construing predecessor statute). You request that this office determine that information responsive to item numbers one, two, and four of the request is not subject to the Act in accordance with Open Records Decision No. 581. However, because you have not submitted the responsive information or representative samples, we have no basis to conclude that it is not subject to disclosure under the Act. Additionally, we have no basis for finding it confidential and excepted from disclosure under section 552.101. Consequently, we have no choice but to conclude that the information at issue is public under section 552.302 and therefore must be released to the requestor. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

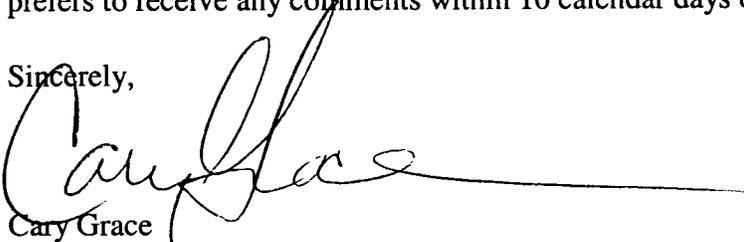
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Mr. John M. Renfrow - Page 4

Ref: ID# 227693

Enc. Submitted documents

c: Ms. Katherine S. Youngblood
11510 Summerhill Lane
Houston, Texas 77024
(w/o enclosures)

- c) The April 2005 request of Katherine S. Youngblood for “any *supporting files and any secondary or ancillary tools* including spreadsheets used to do analysis by the Harris County Appraisal District in its appraisal of properties, determination of market value, and/or equalization of appraisals in Harris County, Texas, for the tax years 1999 to date” requests information that is not “public information” as that term is defined by Tex. Gov’t Code §§ 552.002(a) and 522.022.
- d) Each party shall bear its own costs and attorney’s fees.
- e) All relief requested by the parties and not expressly granted by this judgment is denied.
- f) This is a final judgment.

SIGNED on this 25 day of May, 2006.



PRESIDING JUDGE

APPROVED AS TO FORM:

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- c) The April 2005 request of Katherine S. Youngblood for "any *supporting files and any secondary or ancillary tools* including spreadsheets used to do analysis by the Harris County Appraisal District in its appraisal of properties, determination of market value, and/or equalization of appraisals in Harris County, Texas, for the tax years 1999 to date" requests information that is not "public information" as that term is defined by Tex. Gov't Code §§ 552.002(a) and 522.022.
- d) Each party shall bear its own costs and attorney's fees.
- e) *All relief requested by the parties and not expressly granted by this judgment is denied.*
- f) This is a final judgment.

SIGNED on this ____ day of _____, 2006.

PRESIDING JUDGE

APPROVED AS TO FORM:



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