



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2005

Ms. Noelle C. Letteri
Legal Services Division
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2005-10926

Dear Ms. Letteri:

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# 237620.

The Texas General Land Office (the "land office") received a request for all documents relating to the Permanent School Fund for three specific real estate transactions. You state that some information will be released, but claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the representative of sample of information.¹

Initially, we must address the land office's obligations under the Act. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). You state that the land office received the initial request for information on August 22, 2005. You advise that the land office asked the requestor to clarify his request on August 25, 2005. *See*

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.222; *see also* Open Records Decision No. 31 (1974) (stating that when governmental bodies are presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). Thus, the ten business day time period to request a decision from us under section 552.301(b) was tolled on the date that the land office sought clarification of the request from the requestor. *See* Gov't Code § 552.301(b); *see also* Open Records Decision No. 663 at 5 (1999) (providing that ten-day period is tolled during the clarification process). You state that the land office received the requestor's clarification on September 15, 2005. Accordingly, we conclude that the ten business day time period for requesting a decision from our office resumed on September 16, 2005. However, because your office was closed on September 23, 2005, the ten business day period became due on September 27, 2005. The land office did not request a decision from this office until September 29, 2005. Consequently, we conclude that the land office failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision from us.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with 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). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 (1977).

The land office claims that some of the requested information is excepted under sections 552.101 and 552.105 of the Government Code. Section 552.105 is a discretionary exception under the Act and does not constitute a compelling reason sufficient to overcome the presumption that the requested information is public. *See* Open Records Decision Nos. 564 (1990) (governmental body may waive statutory predecessor to section 552.105), 552 (1989) (discretionary exceptions in general). Section 552.101 can provide compelling reasons for non-disclosure under section 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes. *See* Gov't Code § 552.101. Section 11.086 of the Natural Resources Code provides in relevant part:

Information relating to the location, or purchase price, or sale price of real property purchased or sold by or for the School Land Board, Veterans' Land Board, land office, or commissioner under authority granted by this code is confidential and exempt from disclosure under Chapter 552, Government

Code, until a deed for the property is executed. Information that is confidential and exempted from disclosure under this subsection includes an appraisal, completed report, evaluation, investigation conducted for the purpose of locating or determining the purchase or sale price of the property, or any report prepared in anticipation of purchasing or selling real property.

Nat. Res. Code § 11.086(a). You state that the requested information relates to the location and the purchase or sale price of real property purchased or sold by the School Land Board, land office, or commissioner and indicate that such transactions are under authority granted by the Natural Resources Code. You also inform us that the real estate transaction at issue has not been finalized. Based on your representations and our review of the information at issue, we find that the requested information is confidential under section 11.086 of the Natural Resources Code and must be withheld.

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).

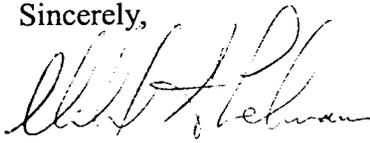
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *Texas 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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "Michael A. Lehmann". The signature is fluid and cursive, with the first name "Michael" and last name "Lehmann" clearly legible.

Michael A. Lehmann
Assistant Attorney General
Open Records Division

MAL/sdk

Ref: ID# 237620

Enc. Submitted documents

c: Mr. Harold Walker
c/o Noelle C. Letteri
Legal Services Division
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P.O. Box 12873
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(w/o enclosures)