

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2006

Mr. Matthew Tepper
McCreary, Veselka, Bragg & Allen, P.C.
5929 Balcones Drive, Suite 200-A
Austin, Texas 78731

OR2006-07297

Dear Mr. Tepper:

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# 253657.

The Bell County Appraisal District (the "district"), which you represent, received a request for "any 2006 ratio studies performed or received by the" district, "all sales, assessments, and background data used to compile these ratio studies[,] and "any derivative analysis." You claim that the requested information does not exist.¹ However, you have submitted "sales information" which pertains to property appraisals for tax year 2006. You claim that the submitted information is beyond the scope of the request and need not be released. In the alternative, you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. We have considered your arguments and reviewed the submitted information.

We begin with your argument that the submitted information is beyond the scope of the request. The Act requires a governmental body to release only information that it believes to be responsive to a request. However, in determining whether information is responsive, a governmental body has a duty to make a good faith effort to relate the request to information that it holds. Open Records Decision No. 590 at 1 n. 1 (1991). We note that the

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

requestor seeks “all sales” used to compile the ratio studies for 2006. After our review, we conclude that the submitted sales information is responsive to the request. Accordingly, we will address your claimed exceptions to disclosure under the Act.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. You contend that the submitted information is confidential under section 22.27 of the Tax Code. This section states in pertinent part:

(a) Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the comptroller about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

Tax Code § 22.27(a). You state that some of the submitted information was “obtained from property owners in connection with the appraisal of their property.” This information is confidential under section 22.27(a) and must be withheld under section 552.101 of the Government Code. You state that the remaining information was obtained voluntarily from Multiple Listing Services (“MLS”), private appraisers, and realtors after a promise that the information would be held confidential. You argue that section 22.27 protects this information as well. We disagree. In order for the remaining sales information to be made confidential under section 22.27(a), it must have been submitted to the district by the respective property owners. As the remaining information was not obtained from the property owners, it is not confidential under section 22.27 and may not be withheld under section 552.101.

You also assert that the remaining information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations,

that substantial competitive injury would likely result from release of the information at issue. *Id.*

You contend that the release of the remaining information would cause substantial competitive harm to MLS and the private appraisers and realtors, as well as the property owners to which the information pertains. Specifically, you argue that releasing information, which MLS sells, to members of the public will destroy the market MLS has to sell its product. You also argue that releasing information provided by private appraisers and realtors would put those appraisers and realtors at a disadvantage because their competitors could use that information to make their own services more valuable. Finally, you contend that releasing the submitted information would put the property owners at a disadvantage when negotiating rental prices and future sales prices. After reviewing your arguments and the submitted information, however, we find that you have made only conclusory allegations that release of the remaining information would result in substantial competitive harm and have not provided a specific factual or evidentiary showing to support this allegation. *See* Open Records Decision Nos. 661 (1999) (must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Thus, none of the remaining information may be withheld on the basis of section 552.110(b).

In summary, the information which was obtained from property owners in connection with the appraisal of their property is confidential under section 22.27 of the Tax Code and must be withheld under section 552.101 of the Government Code. The remaining information must be released to the requestor.

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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/dh

Ref: ID# 253657

Enc. Submitted documents

c: Ms. Abbigail Pendergraft
O'Connor & Associates
2200 North Loop West, Suite 200
Houston, Texas 77018
(w/o enclosures)

CAUSE NO. D-1-GN-06-002592

TAX APPRAISAL DISTRICT OF BELL COUNTY,
Plaintiff,

V.

ATTORNEY GENERAL OF THE STATE OF TEXAS,
Defendant.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS

TRAVIS COUNTY, TEXAS

98th JUDICIAL DISTRICT

Filed in The District Court of Travis County, Texas

JUN 08 2009 TH

At 1:53 P.M.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff Tax Appraisal District of Bell County and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552 (West 2004 and Supp. 2006). The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Abbigail Pendergraft, was sent reasonable notice of this setting and of the parties' agreement that the District may withhold the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of her intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, specifically, 2006 sales in Bell County Appraisal District that the District obtained from a private entity, is excepted from disclosure under Tex. Gov't Code § 552.148(a);

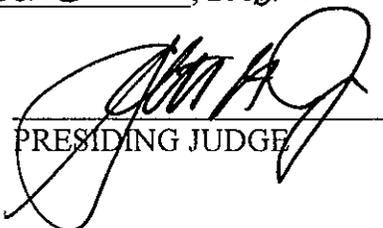
2. The District may withhold from the requestor the information at issue;

3. All costs of court are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

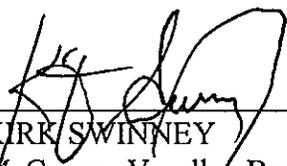
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 8 day of June, 2009



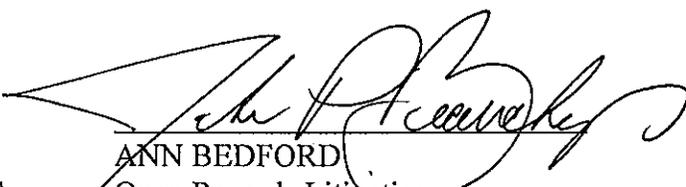
PRESIDING JUDGE

APPROVED:



KIRK SWINNEY

McCreary, Veselka, Bragg & Allen, P.C.
700 Jeffrey Way, Suite 100
Round Rock, Texas 78665-2425
Telephone: 323-3200
Fax: 323-3294
State Bar No. 24029008
ATTORNEY FOR PLAINTIFF



ANN BEDFORD

Open Records Litigation
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: 936-0535
Fax: 320-0167
State Bar No. 24031729
ATTORNEY FOR DEFENDANT