

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 18, 2006

Mr. James R. Evans, Jr.
Attorney at Law
Linebarger Goggan Blair & Sampson, LLP
P. O. Box 17428
Austin, Texas 78760

OR2006-07704

Dear Mr. Evans:

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 requests were assigned ID#s 253381 and 253382. We have combined these files and will consider the issues presented in this single ruling assigned ID# 253381.

The Tom Green County Appraisal District (the "district"), which you represent, received two requests from the same requestor for any 2005 or 2006 ratio studies performed or received by the district, including all sales, assessments, and background data used to compile the studies and any derivative analysis. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You also believe that these requests for information may implicate the interests of the Multiple Listing Service (the "MLS"). You notified the MLS of these requests and of its right to submit arguments to this office as to why the requested information should not be released.¹ We have considered the exception you claim and have reviewed the information you submitted.²

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

²This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

We first note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from the MLS. Thus, the MLS has not demonstrated that any of the submitted information is either confidential or proprietary for the purposes of the Act. *See* Gov't Code §§ 552.101, .110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

Next, we address the district's arguments against disclosure. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 22.27 of the Tax Code, which provides in 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). We understand that the district is an "appraisal office" for purposes of section 22.27. You have submitted, as Exhibits B, C, and D, information that the district seeks to withhold under section 22.27. You state that these documents contain "information obtained by the [d]istrict under promises of confidentiality."

You state that Exhibit B sets forth the sale prices of specific properties identified by legal description, street address, and sale date. We have marked a document in Exhibit D that also contains information concerning specific properties.³ To the extent that Exhibit B and the

³You state that Exhibit D contains information that was provided to the Texas Comptroller of Public Accounts (the "comptroller") at the comptroller's request. We agree that section 22.27 of the Tax Code authorizes information made confidential by this statute to be disclosed to the comptroller. *See* Tax Code § 22.27(b)(3); *see also* Open Records Decision No. 655 at 8 (1997) (information excepted from public disclosure under Act may be transferred between agencies without destroying its confidential character if agency to which information is transferred has authority to obtain it).

marked document in Exhibit D contain information that was voluntarily disclosed to the district by property owners in connection with an appraisal of property, after a promise of confidentiality, we conclude that such information is confidential under section 22.27(a) of the Tax Code. Any such information must be withheld from disclosure under section 552.101 of the Government Code. However, if this information was not voluntarily disclosed to the district by property owners in connection with an appraisal of property, after a promise of confidentiality, then it is not confidential under section 22.27(a), and the district may not withhold this information on that ground under section 552.101. In addition, the remaining documents in Exhibit D contain aggregated information that does not relate to specific properties. We therefore conclude that the district may not withhold the aggregated information in Exhibit D under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code.

Although you also contend that Exhibit C is confidential under section 22.27, you state that the information in Exhibit C was obtained from the local MLS. We note that information obtained from the MLS does not constitute "information the owner of property provides to the appraisal office in connection with the appraisal of the property." Tax Code § 22.27(a). Thus, as the information in Exhibit C does not fall within the scope of section 22.27(a), that information is not made confidential by the statute, and the district may not withhold any of the information in Exhibit C under section 552.101 of the Government Code.

We note, however, that the information in Exhibit C appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary, to the extent that Exhibit B and the marked document in Exhibit D contain information that was voluntarily disclosed to the district by property owners in connection with an appraisal of property, after a promise of confidentiality, such information is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code. The rest of the submitted information must be released. Information that is protected by copyright must be released in accordance with copyright law.

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).

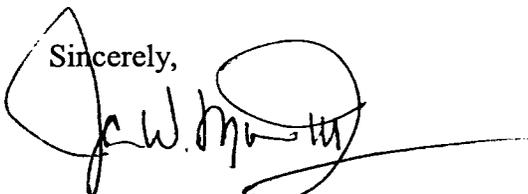
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 "J.W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 253381

Enc: Submitted documents

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

Filed in The District Court
of Travis County, Texas

SEP 21 2009 TR

At 1:39 P.M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GN-06-002676

TOM GREEN COUNTY APPRAISAL
DISTRICT,
Plaintiff,

v.

GREG ABBOTT, ATTORNEY GENERAL,
Defendant.

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IN THE DISTRICT COURT

126TH JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff Tom Green County Appraisal District 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 & Supp. 2008). The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Abigail 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, and did exercise, her right to intervene in the suit to contest the withholding of this information. However, upon Plaintiff's motion, requestor's intervention was struck on September 2, 2009. 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:

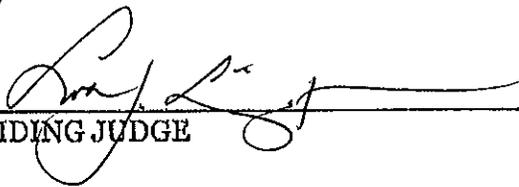
1. The information at issue, specifically, 2005 and 2006 ratio studies performed or received by the Tom Green County Appraisal District including, but not limited to,

overall, commercial, business personal property, residential, or specific land use code studies; a copy of all sales, assessments and background data used to compile these ratio studies; and any derivative analysis, that the District obtained from a private entity that is not the property owner, is excepted from disclosure under Tex. Gov't Code § 552.148(a);

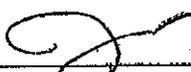
2. The District may withhold from the requestor the information at issue;
3. All costs of court are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff

and Defendant and is a final judgment.

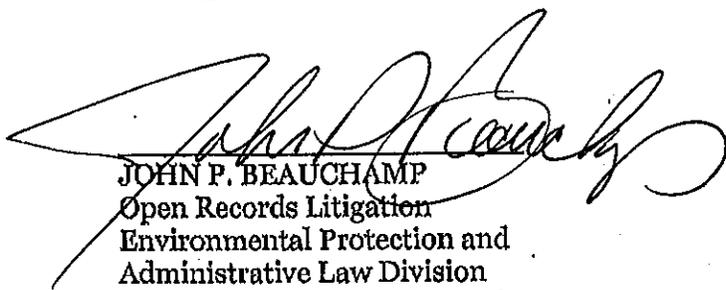
SIGNED this the 21st day of September, 2009.


PRESIDING JUDGE

APPROVED:


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