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 26, 2006

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

OR2006-08097

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 request was assigned ID# 254935.

The Cameron County Appraisal District (the "district"), which you represent, received a request for a copy of the 2005 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 this request for information may implicate the proprietary interests of the Multiple Listing Service (the "MLS"). You have notified the MLS of this request and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the representative sample of submitted information.[1]

[1]This 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).

Initially, we must address the district's obligations under section 552.301 of the Government Code. Pursuant to section 552.301 of the Government Code, a governmental body has certain procedural obligations when it receives a written request for information that it wishes to withhold. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). 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 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). In this instance, the district failed to request this decision within the ten-business-day period prescribed by section 552.301(b). Likewise, the district failed to submit the representative samples of information that it seeks to withhold within the fifteen-business-day period prescribed by section 552.301(e). We therefore find that the district failed to comply with the procedural requirements of section 552.301. *See id.*

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 information at issue 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 section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information and third party interests are at stake, we will consider your 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 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 claim that Exhibits B, C, and D are excepted from disclosure under section 22.27. You state that Exhibit B sets forth the sale prices of specific properties identified by legal description, street address, and sale date. We also note that Exhibit D contains the sale prices and values of specific properties. To the extent that Exhibits B and D contain information pertaining to specific properties 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, the information may not be withheld under section 552.101 in conjunction with section 22.27(a). In addition, a portion of the information in Exhibit D contains aggregated information that does not pertain to specific properties. Therefore, section 22.27 does not apply to this aggregated information; we have marked this information for release.

Although you also assert that Exhibit C is confidential under section 22.27, you state that this information was obtained from the local MLS. 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); *see also* Open Records Decision No. 550 at 7 (1990) ("Information compiled by a private market research firm and provided to an appraisal district as part of a commercial transaction cannot be said to come within the kinds of information made confidential by section 22.27."). Thus, as the information in Exhibit C does not fall within the scope of section 22.27(a), the district may not withhold any of this information on that basis.

Next, we 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 information contained in Exhibit C 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).

We note, however, that Exhibit C contains information that is excepted from disclosure under section 552.137 of the Government Code. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that the individuals to whom the marked e-mail addresses belong have affirmatively consented to the release of the e-mail addresses contained in the Exhibit C. The district must, therefore, withhold the e-mail addresses we have marked under section 552.137.

In summary, to the extent that Exhibits B and D contain information pertaining to specific properties 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 Property Code and must be withheld under section 552.101 of the Government Code. The district must withhold the e-mail addresses we have marked in Exhibit C under section 552.137 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,

Candice M. De La Garza

Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 254935

Enc. Submitted documents

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

F)in The District Court
ravis County, Texas

NOV 18 2008
At 1:45 P.M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GN-06-003115

CAMERON APPRAISAL DISTRICT, Plaintiff,	§	IN THE DISTRICT COURT OF
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
GREG ABBOTT, ATTORNEY GENERAL, Defendant.	§	250th JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff Cameron 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. 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, "any 2005 ratio studies performed or received by the Cameron 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 18th day of November, 2008.

PRESIDING JUDGE

APPROVED:

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