

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

August 24, 2006

Mr. James R. Evans, Jr.  
Linebarger Goggan Blair & Sampson, LLP  
P.O. Box 17428  
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OR2006-08172A

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# 253844.

On July 27, 2006, this office issued Open Records Letter No. 2006-08172 (2006); however, we have determined that this prior ruling should be corrected, in part, for purposes of due process. *See Gov't Code* §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2006-08172 and serves as the correct ruling. *See generally id.* §§ 552.011 (Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of the Act).

The Hunt County Appraisal District (the "district"), which you represent, received requests for information pertaining to ratio studies performed or received by the district in 2005. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You also indicate that MetroTex was notified of the district's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released to the requestor. *See id.* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability

of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

MetroTexas argues that the submitted information is subject to section 552.027 of the Government Code. Section 552.027(a) provides that “[a] governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.” Gov’t Code § 552.027(a). Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. The legislative history of this provision notes that section 552.027 should exclude from the definition of public information

books and other materials that are also available as research tools elsewhere *to any member of the public*. Thus, although public library books are available for public use, the library staff will not be required to do research or make copies of books for members of the public.

INTERIM REPORT TO THE 74TH LEGISLATURE OF THE HOUSE STATE AFFAIRS COMM., 74th Leg., R.S., SUBCOMMITTEE ON OPEN RECORDS REVISIONS 9 (1994) (emphasis added). Accordingly, section 552.027 excludes commercially available research material from the definition of “public information.” Neither the district nor MetroTex has submitted arguments explaining that the submitted information is commercially available; therefore, we find that the information at issue is not subject to section 552.027, and it must be released unless it falls within an exception to public disclosure. *See* Gov’t Code § 552.002.

The district and MetroTexas assert that the submitted information is excepted under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that other statutes make confidential. Section 22.27(a) of the Tax Code provides the following:

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

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<sup>1</sup>We 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.

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.

The district informs us that some of the information was obtained from the Multiple Listing Service (“MLS”) under promises of confidentiality. We note, however, that section 22.27(a) protects “information the owner of property provides to the appraisal office in connection with the appraisal of the property[.]” *Id.* Thus, the district has not demonstrated that the information obtained from MLS falls within the scope of section 22.27(a). 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.”). Accordingly, the district may not withhold any of the information obtained from MLS under section 552.101 of the Government Code on that ground. However, the district also indicates that some of the submitted information was obtained by the district directly from property owners. Accordingly, to the extent the submitted information was provided by property owners to the district in connection with the 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.

MetroTex indicates that the information at issue is excepted under section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: trade secrets and commercial or financial information the release of which would cause a third party substantial competitive harm. Section 552.110(a) of the Government Code excepts from disclosure “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision.” The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1958); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not

simply information as to single or ephemeral events in the conduct of the business. . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.<sup>2</sup> RESTATEMENT OF TORTS § 757 cmt. b (1939). This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5-6 (1990). However, we cannot conclude that section 552.110(a) applies unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. *See* Open Records Decision No. 402 (1983).

Section 552.110(b) excepts from disclosure "[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." Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

MetroTex has not submitted any arguments explaining the applicability of section 552.110(a) or to the information at issue. Accordingly, we find MetroTex has not shown that any of the submitted information meets the definition of a trade secret or demonstrated the necessary factors to establish a trade secret claim. We also find that MetroTex has made only conclusory allegations that release of the information at issue would cause the company substantial competitive injury and has provided no specific factual

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<sup>2</sup>The following are the six factors that the Restatement gives as indicia of whether information constitutes a trade secret: (1) the extent to which the information is known outside of the company; (2) the extent to which it is known by employees and others involved in the company's business; (3) the extent of measures taken by the company to guard the secrecy of the information; (4) the value of the information to the company and its competitors; (5) the amount of effort or money expended by the company in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

or evidentiary showing to support such allegations. Thus, none of the information at issue may be withheld pursuant to section 552.110(b).

We note that some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person 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 (1990).

To conclude, the submitted information that property owners provided to the district in connection with the appraisal of property after a promise of confidentiality is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code. The district must release the remaining information, but any copyrighted information may only 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).

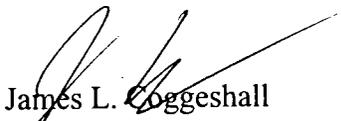
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 253844

c: Ms. Abbigail Pendergraft  
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(w/o enclosures)

SEP 21 2009 TR

At 1:39 P.M.  
Amalla Rodriguez-Mendoza Clerk

CAUSE NO. D-1-GN-06-003114

HUNT COUNTY APPRAISAL DISTRICT, <i>Plaintiff,</i>	§	IN THE DISTRICT COURT
	§	
v.	§	201 <sup>ST</sup> JUDICIAL DISTRICT
	§	
GREG ABBOTT, ATTORNEY GENERAL, <i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS
	§	

**AGREED FINAL JUDGMENT**

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff Hunt 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:

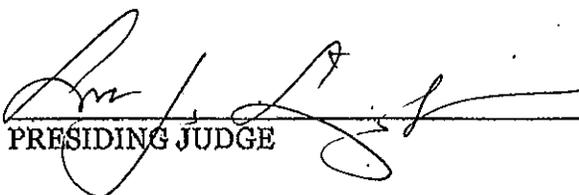
1. The information at issue, specifically, "a copy of any 2005 ratio studies performed or received by the Hunt County Appraisal District" including, but "not limited to, overall, commercial, business personal property, residential, or specific land use code

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);

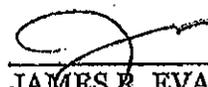
2. The District may withhold from the requestor the information at issue;
3. All costs of court are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff

and Defendant, and is a final judgment.

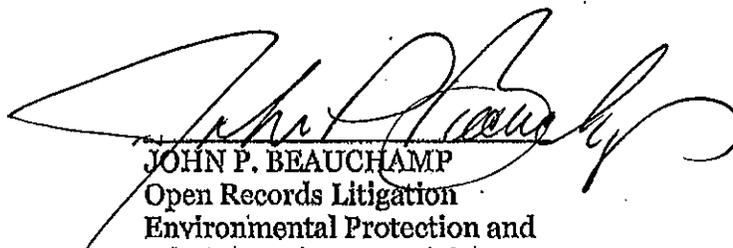
SIGNED this the 21<sup>st</sup> day of September, 2009.

  
PRESIDING JUDGE

APPROVED:

  
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