

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 11, 2006

Mr. James R. Evans, Jr.  
Linebarger, Goggan, Blair & Sampson, L.L.P.  
P.O. Box 17428  
Austin, Texas 78760

OR2006-09087

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# 257046.

The Tom Green County Appraisal District (the "district"), which you represent, received a request for the "2006 sales in" the district. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You state that release of some of the requested information may implicate the proprietary interests of the San Angelo Association of Realtors (the "association"). The association has submitted a letter in which it raises sections 552.027, 552.101, and 552.110 of the Government Code, as well as federal copyright law. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released). We have considered the submitted arguments and reviewed the submitted information.<sup>1</sup>

Initially, the association raises section 552.027 of the Government Code. Section 552.027 provides:

(a) 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

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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.

publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

*Id.* § 552.027. This section 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. In this instance, although the association raises section 552.027, it has not submitted arguments explaining the applicability of that section to the information at issue. *See id.* Therefore, we find that the information is not subject to section 552.027 and must be released unless it falls within an exception to public disclosure.

Next, we address 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 section encompasses information protected by other statutes. Both the district and the association 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. Therefore, 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 from other sources, including the association. 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 property owners, it is not confidential under section 22.27 and may not be withheld under section 552.101.

The association contends that the information it provided to the district is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects: (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b). Section 552.110(a) protects the property interests of private parties by excepting from disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *See id.* § 552.110(a). A "trade secret"

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] 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, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, 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 Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company's] business;
- (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 to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing this information; and
- (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 No. 232 (1979). This office must accept a claim that information subject to the Act is exempted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990). However, we cannot conclude that section 552.110(a) is applicable 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. Open Records Decision No. 402 (1983).

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. *See id.*; *see also National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

The association states that the information at issue is its “‘trade secret’ as a member joins to work in cooperation with other members to share data and market information not available from another source.” The association also argues that release of this information would be financially damaging. After reviewing the association’s arguments and the information at issue, however, we find that the association has not demonstrated that any of the information qualifies as trade secret information. *See* RESTATEMENT OF TORTS § 757 cmt. b (1939) (information is generally not trade secret if it is “‘simply information as to single or ephemeral events in the conduct of the business’” rather than “‘a process or device for continuous use in the operation of the business’”). We also find that the association has made only conclusory allegations that release of the remaining information would result in substantial competitive harm and has not provided a specific factual or evidentiary showing to support this allegation. *See* Open Records Decision No. 661 (1999) (must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Therefore, the association has not demonstrated the applicability of section 552.110 in this instance, and none of the remaining information may be withheld on that basis.

Finally, we address the district's and association's claims that some of the remaining information is subject to 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, the information that 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. However, information that is protected by copyright may only be released in compliance 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,



James A. Person III  
Assistant Attorney General  
Open Records Division

JAP/dh

Ref: ID# 257046

Enc. Submitted documents

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

Mr. Larry Edgington  
President  
San Angelo Association of Realtors  
1902 Pecos  
San Angelo, Texas 76901  
(w/o enclosures)

SEP 21 2009 TR

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

CAUSE NO. D-1-GN-06-003116

TOM GREEN COUNTY APPRAISAL  
DISTRICT,  
*Plaintiff,*

v.

GREG ABBOTT, ATTORNEY GENERAL,  
*Defendant.*

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IN THE DISTRICT COURT

261<sup>ST</sup> 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:

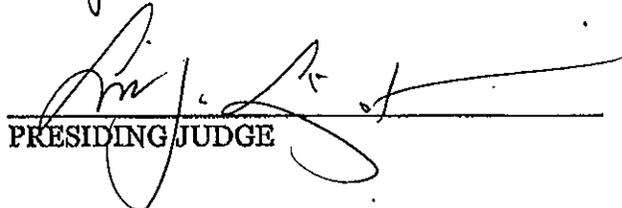
1. The information at issue, specifically, an electronic copy of the 2006 sales in

Tom Green County Appraisal District, 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);

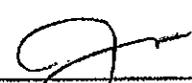
2. The District may withhold from the requestor the information at issue;
3. All costs of court are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff

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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