



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2007

Mr. James G. Nolan
Open Records Attorney
Open Government Section
Texas Comptroller of Public Accounts
PO Box 13528
Austin, Texas 78711-3528

OR2007-04707

Dear Mr. Nolan:

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# 276717.

The Texas Comptroller of Public Accounts (the "comptroller") received four requests for several categories of information related to the 2006 Property Value Study by the comptroller concerning four specific school districts. You state that you will release some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also indicate that the submitted information may be subject to third party proprietary interests. Pursuant to section 552.305 of the Government Code, you have notified MetroTex Association of Realtors ("MetroTex"), Longview Area Association of Realtors, Inc. ("LAAR"), North Texas Real Estate Information Systems, Inc. ("NTREIS"), and Fidelity MLS Systems & Solutions ("Fidelity") of the request and of each company's right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of

exception to disclosure under the Act in certain circumstances). We have received arguments from MetroTex and Longview. We have considered all of the submitted exceptions and reviewed the submitted representative sample of information.¹

Initially, we address LAAR's arguments under 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). Therefore, section 552.027 excludes commercially available research material from the definition of "public information."

LAAR argues that the Multiple Listing Services ("MLS") information is commercially available. We understand that access to a local MLS is generally limited to licensed real estate brokers and appraisers. Where access to information is limited to certain licensed individuals, such information cannot be said to be available "to any member of the public." LAAR has not explained whether the submitted MLS information is only available to licensed real estate brokers and appraisers or if it is available to the public. Therefore, we find that the company has failed to demonstrate that the MLS information is commercially available for the purposes of section 552.027 of the Government Code. *See* Gov't Code § 552.027. Accordingly, the submitted information is not subject to section 552.027 and must be released unless it falls within an exception to public disclosure.

¹ 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.

We now turn to the comptroller's argument for the submitted information. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 403.304 of the Government Code provides:

(a) All information the comptroller obtains from a person, other than a government or governmental subdivision or agency, under an assurance that the information will be kept confidential, in the course of conducting a study of school district values is confidential and may not be disclosed except as provided in Subsection (b).

(b) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who gave the information to the comptroller; or

(3) for statistical purposes if in a form that does not identify specific property or a specific property owner.

Gov't. Code § 403.304. The comptroller informs us that the information at issue pertains to commercial real estate sales and valuation information obtained from NTREIS, Fidelity, LAAR, and MetroTex, all non-governmental entities. You state that all of the information was obtained by the comptroller in the course of conducting the comptroller's Annual Property Value Survey, a study required under section 403.302 of the Government Code that evaluates school district property values. *See id.* § 403.302. You inform us that the information was obtained under subscription agreements and the assurance that the information will be kept confidential by the comptroller. You also state that none of the exceptions to confidentiality set forth in subsection 403.304(b) apply in this instance. Based on your representations and our review, we agree that the submitted information must be withheld under section 552.101 in conjunction with section 403.304(a) of the Government Code. As we are able to reach this conclusion, we do not address any of the remaining arguments.

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).

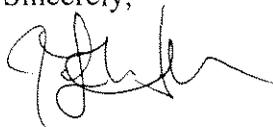
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/jb

Ref: ID# 276717

Enc. Submitted,documents

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