



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2007

Mr. James G. Nolan
Assistant General Counsel
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2007-04772

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# 276876.

The Comptroller of Public Accounts (the "comptroller") received eight requests from two requestors for multiple categories of information relating to the annual property value study pertaining to the Alvarado, Cleburne, Cooper, Ennis, Forney, Kilgore, Llano, and Poteet Independent School Districts. You state that some of the requested information will be released to the requestor. You claim that the remaining information is excepted from disclosure under section 552.101 of the Government Code. You also indicate that releasing the remaining information may implicate the interests of third parties.¹ Accordingly, you have notified the interested third parties of the request and of their opportunity to submit arguments to this office. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of the exception to disclosure in certain circumstances). We have considered all of the submitted arguments and reviewed the submitted representative sample of information.²

¹The interested third parties are the Austin Board of Realtors; Fidelity MLS Systems & Solutions; Highland Lakes Association of REALTORS; Longview Area Association of Realtors, Inc.; MetroTex Association of Realtors; North Texas Real Estate Information Systems, Inc.; and the San Antonio Board of Realtors.

²We 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

Section 552.101 of the Government Code excepts 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. You inform us that the information at issue pertains to commercial real estate sales and valuation information obtained from the third parties, which are non-governmental entities. You state that the information was obtained 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 Gov’t. Code § 403.302. You inform us that the information was obtained under an 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 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

to the extent that those records contain substantially different types of information than that submitted to this office.

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/eeg

Ref: ID# 276876

Enc. Submitted documents

c: Mr. Ray Bonilla
Ray, Wood & Bonilla
2700 Bee Caves Road
Austin, Texas 78746
(w/o enclosures)

Mr. Tom Witt
Linebarger, Blair, Goggan & Sampson
1949 South IH-35
Austin, Texas 78741
(w/o enclosures)

Fidelity MLS Systems & Solutions
17300 West 119th Street
Olathe, Kansas 66061
(w/o enclosures)

Mr. Charles Porter
Austin Board of Realtors
10900 Stonelake Boulevard, Suite 100
Austin, Texas 78759

Mr. Rich Thomas
MetroTex Association of Realtors
8201 North Stemmons Freeway
Dallas, Texas 75247
(w/o enclosures)

Mr. Bill Maxwell
Longview Area Association of Realtors
1514 Judson Road
Longview, Texas 75601
(w/o enclosures)

Mr. Travis Kessler
San Antonio Board of Realtors
South Texas Real Estate Center
9110 West IH 10
San Antonio, Texas 78230
(w/o enclosures)

Ms. Sheila Rice
North Texas Real Estate Information
Systems
1950 Stemmons Freeway, Suite 3018
Dallas, Texas 75207
(w/o enclosures)

Ms. Linda Ferguson
Association Executive
Highland Lakes Association of REALTORS
918 Second Street
Marble Falls, Texas 78654
(w/o enclosures)