



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2007

Mr. James R. Evans
Hargrove & Evans, L.L.P.
4425 Mopac South
Building 3, Suite 400
Austin, Texas 78735

OR2007-09852

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 #285494.

The Cameron Appraisal District (the "district"), which you represent, received a request for "any sales data you have with confirmed prices from sales of commercial or residential property since 01/01/2005." You claim that the submitted information is excepted from disclosure under sections 552.101, 552.110, and 552.148 of the Government Code, as well as copyright law. You also state that release of a portion of this information may implicate the proprietary interests of the Brownsville Board of Realtors and the Harlingen Board of Realtors. Accordingly, you inform us, and provide documentation showing, that you notified these parties of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have received correspondence from the Harlingen Board of Realtors and have reviewed the submitted representative sample of information.¹

¹We 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.

Initially, we note, and you acknowledge, that the district has not complied with the procedural requirements of section 552.301 of the Governmental Code in submitting its arguments under section 552.148. *See* Gov't Code § 552.301(b), (e). Generally, Violations of section 552.301 result in the waiver of any discretionary exceptions asserted by a governmental body. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). However, section 552.148 of the Government Code is a mandatory exception that cannot be waived by a governmental body's failure to comply with section 552.301. Therefore, we will consider your argument under this exception, as well as the exceptions you timely raised.

You claim that the information contained within Exhibit B is excepted from disclosure under section 552.148 of the Government Code.² Section 552.148 provides in relevant part, “[i]nformation relating to real property sales prices, descriptions, characteristics, and other related information received from a private entity by the comptroller or the chief appraiser of an appraisal district under Chapter 6, Tax Code, is excepted from the requirements of Section 552.021.” Gov't Code § 552.148(a). You state that the information at issue in Exhibits B consists of real property sales information obtained from “local Association[s] of Realtors, providers of commercial sales brokers, and parties to sale transactions.” You do not inform us that the district is authorized to release this information to the requestor. *See id.* § 552.148(b) (providing property owner or owner's agent access to certain information). Based on your representations and our review of the information at issue, we find that the district must withhold Exhibit B under section 552.148 of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure concerning this exhibit.

Section 552.101 of the Government Code 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. You contend that Exhibit C 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

²Act of May 21, 2007, 80th Leg., R.S., H.B. 2180, § 1 (to be codified at Gov't Code § 552.148).

appraisal office who appraises property except as authorized by Subsection(b) of this section.

Tax Code § 22.27(a). You indicate that Exhibit C contains sales information that was obtained from property owners under a promise of confidentiality. Based on this representation and our review, we find that this information is confidential under section 22.27(a) and must be withheld under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure of this exhibit.

In summary, Exhibit B must be withheld under section 552.148 of the Government Code. Exhibit C must be withheld under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/jb

Ref: ID# 285494

Enc. Submitted documents

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

Harlingen Board of Realtors
417 South Third Street
Harlingen, Texas 78550
(w/o enclosures)

Brownsville/South Padre Board of Realtors
P.O. Box 4876
Brownsville, Texas 78523
(w/o enclosures)

Mr. Frutoso Gomez, Jr., Chief Appraiser
Cameron Appraisal District
P.O. Box 1010
San Benito, Texas 78586-1010
(w/o enclosures)