



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2007

Mr. Matthew Tepper
McCreary, Veslka, Bragg & Allen, P.C.
700 Jeffrey Way, Suite 100
Round Rock, Texas 78665

OR2007-15547

Dear Mr. Tepper:

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# 295759.

The Lynn County Appraisal District (the "district"), which you represent, received a request for "a copy of the appraisal district's 2006 and 2007 commercial ratio studies, including a copy of all supporting (raw) data used to create the ratio study." You state that the district does not keep or maintain its ratio studies.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.110, and 552.148 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. 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,

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.-San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

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 is sales information that was obtained from property owners under promises of confidentiality. Based on this representation and our review, we agree that this information is confidential under section 22.27(a) and must be withheld under section 552.101 of the Government Code.

You assert the remaining information is excepted under section 552.148 of the Government Code. Section 552.148 provides in relevant part that “[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.” Act of May 21, 2007, 80th Leg., R.S., ch. 471, § 1, 2007 Tex. Sess. Law Serv. 832 (Gov’t Code § 552.148(a)). You state that the remaining information at issue consists of real property sales information obtained from realtors, private appraisers, and other private entities. The legislative history of section 552.148 indicates that it was enacted as a result of the issuance of several open records rulings of this office in which we ruled that information provided by Multiple Listing Services (“MLS”) to appraisal districts under confidentiality agreements is subject to required public disclosure under the Act. HOUSE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. Comm. Substitute H.B. 2188, 80th Leg., R.S. (2007); *see e.g.*, Open Records Letter Nos. 2006-07161 (2006); 2006-04628 (2006). Because of these rulings, many MLS stopped providing sales information to appraisal districts. The bill analysis of House Bill 2188 states that the purpose of section 552.148 is to allow the relationships between MLS and appraisal districts to continue. HOUSE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. Comm. Substitute H.B. 2188, 80th Leg., R.S. (2007). Accordingly, because realtors and private appraisers provide information to MLS, the remaining real property sales information that was obtained from realtors and private appraisers is confidential under section 552.148. We also find that, to the extent any remaining real property sales information was obtained from an MLS or other similar entity, any such information is confidential under section 552.148. To the extent any remaining information was not obtained from such an entity, it is not confidential under section 552.148 of the Government Code.

You also raise section 552.110(b) of the Government Code, which excepts from disclosure “commercial 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). 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 information at issue. Having considered your arguments, we conclude that you have not demonstrated that any of the submitted information is excepted from disclosure under section 552.110(b). Nor has this office received any arguments against disclosure from MLS or any other interested third party. *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 Act in certain circumstances); 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). Accordingly, the district may not withhold any of the submitted information under section 552.110(b).

To conclude, the submitted sales information that was obtained from property owners under promises 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 submitted real property sales information that was obtained from realtors, private appraisers, MLS or other similar entities is confidential under section 552.148 of the Government Code. To the extent any remaining information was not obtained from such an entity, it is not confidential under section 552.148 of the Government Code and must be released.

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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/mcf

Ref: ID# 295759

Enc: Submitted documents

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