



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2007

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

OR2007-15612

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# 295899.

The Burnet Central Appraisal District (the "district"), which you represent, received two requests from the same requestor for (1) all data contained in the district's commercial comparable sales data base; (2) any sales data with confirmed prices from sales of commercial property since 1-1-2006; and (3) the district's 2006 and 2007 commercial ratio studies, including supporting data used to create the study. You state that the district does not retain 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 have 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." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 22.27 of the Tax Code, which provides in part:

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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 buyers and sellers of property in connection with appraisals and under promises of confidentiality. Based on your representations and our review of the information in question, we conclude that the district must withhold that information under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code.

You assert that the rest of the submitted information is excepted from disclosure 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)). 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). You state that the remaining information at issue consists of real property sales information obtained from MLS, realtors, and private appraisers. We note that because realtors and appraisers enter data into MLS, they also are considered to be encompassed by section 552.148. Therefore, based on your representations, we conclude that the rest of the information at issue is confidential under section 552.148.

In summary, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code and section 552.148 of the Government Code. As we are able to make these determinations, we do not address your other arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III'. The signature is fluid and cursive, with a large loop at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 295899

Enc: Submitted documents

c: Ms. Abbigail Pendergraft
Patrick O'Connor & Associates, L.P.
2200 North Loop West Suite 200
Houston, Texas 77018
(w/o enclosures)