



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 5, 2007

Mr. Matthew Tepper  
McCreary, Veselka, Bragg & Allen, P.C.  
Litigation Department  
700 Jeffrey Way, Suite 100  
Round Rock, Texas 78665-2425

OR2007-15983

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# 296429.

The Calhoun County Appraisal District (the "district"), which you represent, received a request for a copy of any information and data used to establish the amount of 50% increase to the value of improvements only in a specified neighborhood for 2007. 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. We have also received and considered the requestor's comments. *See Gov't Code § 552.304* (interested party may submit written comments concerning availability of requested 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, 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 property owners in connection with the appraisal of their properties under promises of confidentiality. We note that the comments received from the requestor dispute that the district obtained the requested information “pursuant to any promise of confidentiality.” Whether the information at issue was obtained pursuant to promises of confidentiality presents a fact issue. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). After careful review of the submitted documents and consideration of your arguments, we conclude that this information is confidential under section 22.27(a) and must be withheld under section 552.101 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.” 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 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 multiple listing services 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 multiple listing services and appraisal districts to continue. HOUSE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. Comm. Substitute H.B. 2188, 80th Leg., R.S. (2007). Accordingly, for information obtained from realtors and private appraisers, we find the information is confidential under section 552.148. For information obtained from other private entities, we find that, to the extent the information was obtained from a multiple listing service or other similar entity, the information is confidential under section 552.148. To the extent the information was not obtained from such an entities, the remaining information at issue is not confidential under section 552.148 of the Government Code and may not be withheld on that basis.

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. You contend that the release of the remaining information would cause substantial competitive harm to realtors, private appraisers, as well as the property owners to which the information pertains. Specifically, you argue that releasing information to members of the public will cause substantial injury to the private appraisers’ and realtors’ proprietary information. You also argue that releasing information provided by private appraisers would put those appraisers at a disadvantage because their competitors could use that information to make their own services more valuable. Finally, you contend that releasing the submitted information would put the property owners at a disadvantage when negotiating rental prices and future sales prices. After reviewing your arguments and the submitted information, however, we find that you have made only conclusory allegations that release of the remaining information would result in substantial competitive harm and have not provided a specific factual or evidentiary showing to support this allegation. *See* Open Records Decision No. 661 (1999) (must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Furthermore, we have not received any comments from any interested third parties explaining how the release of any of the submitted information will affect their proprietary interests. Thus, none of the remaining information may be withheld on the basis of section 552.110(b).

In summary, the information which was obtained from property owners after promises of confidentiality and in connection with the appraisal of their properties is confidential under section 22.27 of the Tax Code and must withheld under section 552.101 of the Government Code. The district must withhold the information under section 552.148 of the Government Code to the extent that it was obtained from realtors, private appraisers, multiple listing services, or other similar entities. The remaining information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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.

Sincerely,

A handwritten signature in black ink that reads "Henisha D. Anderson". The signature is fluid and cursive, with the first name being the most prominent.

Henisha D. Anderson  
Assistant Attorney General  
Open Records Division

HDA/jb

Ref: ID# 296429

Enc: Submitted documents

c: Mr. Allen Junek  
P.O. Box 69  
Port O'Connor, Texas 77982  
(w/o enclosures)