ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2007

Mr. James R. Evans, Jr.
Hargrove & Evans, LLP
4425 MOPAC South, Building 3, Suite 400
Austin, Texas 78735

OR2007-16005

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# 296272.

The Caldwell County Appraisal District (the "district"), which you represent, received a request for all data contained in the district's commercial sales database and any sales data with confirmed prices from sales of commercial property since January 1, 2006. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted representative sample of information.[2]

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[1] We note that you did not raise section 552.101 as an exception to disclosure within ten business days of the date the district received the present request. *See* Gov't Code §§ 552.301(b), .302. However, because section 552.101 is a mandatory exception that can provide a compelling reason to withhold information from disclosure, we will address your claim under section 552.101. *See id.*; *see also* Open Records Decision Nos. 150 at 2 (1977), 319 (1982).

[2] We 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.

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. You contend that the requested information 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 appraisal office who appraises property except as authorized by Subsection(b) of this section.

Tax Code § 22.27(a). You claim that the requested information contains sales information that was obtained from property owners under promises of confidentiality. Based on your representation, we find that the information obtained from property owners is confidential under section 22.27(a) and must be withheld under section 552.101 of the Government Code.[3]

The district asserts that the remaining information at issue 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." Gov't Code § 552.148(a). You state that a part of the information at issue consists of real property sales information obtained from 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

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[3] As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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, to the extent the remaining information was obtained from a multiple listing service or other similar entity, the information is confidential under section 552.148. To the extent the remaining information was not obtained from such an entity, the information at issue is not confidential under section 552.148 of the Government Code and may not be withheld on that basis.

In summary, the district must withhold the information obtained from property owners under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code. The district must withhold the remaining information under section 552.148 of the Government Code, if it was provided to the district by a multiple listing service or other similar entity. If the remaining information was not provided to the district by a multiple listing service or other similar entity, then the remaining information 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 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).

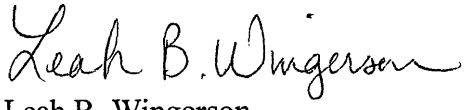
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 296272

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)