



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2007

Mr. Christopher S. Jackson
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.
3301 Northland Drive, Suite 505
Austin, Texas 78731

OR2007-16165

Dear Mr. Jackson:

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# 296744.

The Guadalupe Appraisal District (the "district"), which you represent, received a request for any sales data in possession of the district based on confirmed prices from sales of commercial property since January 1, 2006. You state you have released some information to the requestor. However, you claim that the information at issue is excepted from disclosure under sections 552.101 and 552.148 of the Government Code. We have reviewed the submitted arguments as well as the submitted representative sample of information.¹ We have also received and considered comments submitted by an attorney representing the New Braunfels/Canyon Lake Area Association of Realtors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You state that the information at issue has been previously ruled upon by this office and that Open Records Letter No. 2006-07333 (2006) should be relied on as a previous determination. However, the governmental body involved in this previous ruling was the Smith County

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.

Appraisal District. Because the instant request for information was received by a different governmental body, Open Records Letter No. 2006-07333 cannot be relied on as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, the first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.148 of the Government Code provides:

(a) Information 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.

(b) . . . , the property owner or agent may, on request, obtain from the chief appraiser comparable sales data from a reasonable number of sales . . . Information obtained under this subsection:

(1) remains confidential in the possession of the property owner or agent; and

(2) may not be disclosed or used for any purpose except as evidence or argument at the hearing on the protest.

(c) . . . , the property owner . . . may, on request, obtain from the comptroller any information, including confidential information, obtained by the comptroller in connection with the comptroller's finding that is being protested. Confidential information obtained by a property owner, . . . under this subsection:

(1) remains confidential in the possession of the owner, district or agent; and

(2) may not be disclosed to a person who is not authorized to receive or inspect the information.

See Act of May 21, 2007, 80th Leg., R.S., ch. 471, § 1, 2007 Tex. Sess. Law Serv. 832 (to be codified at Gov't Code § 552.148). The legislative history of section 552.148 indicates 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 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 a multiple listing service and appraisal districts to continue. HOUSE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. Comm. Substitute H.B. 2188, 80th Leg., R.S. (2007). Here, the district states the information at issue relates to real property sales prices, descriptions, and characteristics obtained from private entities. The district does not inform us, nor does it appear, that the district is authorized to release this information to the requestor. *See* Gov't Code § 552.148(b) (providing property owner or owner's agent access to certain sales data for specified purpose). Based on the district's representations, we conclude 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 entity, the information is not confidential under section 552.148 of the Government Code and must be released.

Lastly, the district asks whether section 552.148 makes the information confidential or whether the district has the discretion to release the information. We conclude that based on the plain language of the statute and when read as a whole, section 552.148 makes the information confidential and the district may not voluntarily release the information except as provided by section 552.148(b).

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

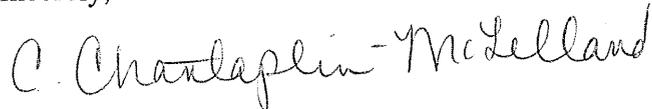
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Chanita Chantaplin-McLelland
Assistant Attorney General
Open Records Division

CC/jb

Ref: ID# 296744

Enc. Submitted documents

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