



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 10, 2007

Ms. Kelly Sherbert  
Public Information Officer  
Harris County Appraisal District  
13013 Northwest Freeway  
Houston, Texas 77040

OR2007-16271

Dear Ms. Sherbert:

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# 296916.

The Harris County Appraisal District (the "district") received a request for 2007 hearing files and audio files for four specified accounts. You state that you do not have information responsive to a portion of the request.<sup>1</sup> You also state that some of the requested information will be provided to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.148 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

The district asserts that some of the submitted information, which it has marked, is subject to section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code. Section 552.101 excepts from disclosure "information considered to be confidential

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the city. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. 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). We understand that the district is an “appraisal office” for purposes of section 22.27. You state that some of the submitted information is sales information that was obtained from property owners in connection with the appraisal of property under promises of confidentiality. You also state that none of the exceptions listed in section 22.27(b) apply. Based on these representations and our review, we agree that the information in Items A-7, A-8, B-9, B-10, C-7, and C-8 which we have marked, is confidential under section 22.27(a) and must be withheld under section 552.101 of the Government Code. However, you have failed to demonstrate that the remaining information was disclosed to the district by property owners after a promise that the information would be held confidential. Thus, none of the remaining information you have marked is confidential under section 22.27(a) and it may not be withheld under section 552.101.

You also assert that some of the submitted information, which you have marked, 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. You state that some of the submitted information 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 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, the district must withhold Item B-4, which we have marked, under section 552.148 because it pertains to real property sales information that was obtained from a multiple listing service. However, upon review of the remaining information, we cannot discern whether the remaining information was obtained from a multiple listing service or other similar entity under section 552.148 of the Government Code.

In summary, the district must withhold the information we have marked under section 552.101 in conjunction with section 22.27 of the Tax Code. The district must withhold the information we have marked under section 552.148. To the extent the remaining information was obtained from realtors, private appraisers, multiple listing services, or other similar entities, it is confidential under section 552.148 of the Government Code. However, to the extent the remaining information was not obtained from such an entity, it is not confidential under section 552.148. As you raise no further exceptions against disclosure, 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,



Loan Hong-Turney  
Assistant Attorney General  
Open Records Division

LH/eeg

Ref: ID# 296916

Enc. Submitted documents

c: Mr. Dan Hart  
71 Hiburly Drive  
Houston, Texas 77024  
(w/o enclosures)