



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2007

Mr. Joseph T. Longoria
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.
1235 North Loop West, Suite 600
Houston, Texas 77008

OR2007-16708

Dear Mr. Longoria:

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# 297580.

The Nolan County Appraisal District (the "district"), which you represent, received two requests from the same requestor for (1) the district's 2006 and 2007 commercial ratio studies, (2) data from the commercial comparable sales database, and (3) a copy of the sales data "with confirmed prices from sales of commercial property since 1-1-2006." You claim that the submitted information is 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 representative sample of information.¹

Initially, you inform us that the requested information may be the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2004-7888 (2004). We note, however, that Open Records Letter No. 2004-7888 was issued to the El Paso Central Appraisal District. Therefore, because the governmental body in this instance is not the same as in Open Records Letter No. 2004-7888, the district may

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.

not rely on that ruling as a previous determination. *See* Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). Accordingly, we will address your arguments with regard to the submitted information.

Next, you acknowledge that the district failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Sections 552.101 and 552.148 can provide compelling reasons to overcome this presumption; therefore, we will address your arguments under these exceptions.

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. 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 you to assert that some of the submitted information is sales information that was obtained from property owners under promises of confidentiality. Based on this representation and our review, we agree that such information is confidential under section 22.27(a) and must be withheld under section 552.101 of the Government Code.

You assert the remaining information is excepted under section 552.148 of the Government Code. 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.

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 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 remaining information 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.

To conclude, the submitted sales information that was obtained from property owners under promises of confidentiality is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code. The submitted real property sales information that was obtained from realtors, private appraisers, multiple listing services, or other similar entities must be withheld under section 552.148 of the Government Code. To the extent any remaining information was not obtained from such an entity, it is not confidential under section 552.148 of the Government Code and 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

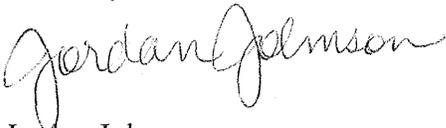
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/jb

Ref: ID# 297580

Enc. Submitted documents

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