



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2008

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

OR2008-00639

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# 299361.

The Calhoun County Appraisal District (the "district"), which you represent, received a request for "a copy of all statistical information reviewed by the District to justify the increase to the value of improvements for the City of Seadrift in 2007" as well as "the date range of sales and the number of sales sampled" if sales were used in the study. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code. In addition, you assert that release of some of this information may implicate the proprietary interests of third parties. Pursuant to section 552.305 of the Government Code you were required to notify the interested third parties of the request and of their opportunity to submit comments to this office explaining why their information should be withheld from disclosure. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address your assertion that the district "does not have a document which quantifies the number of sales sampled." We note that the Act does not require a

governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Likewise, a governmental body is not required to produce the responsive information in the format requested, a list, or create new information to respond to the request for information. *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland 2000, petition denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). In this instance, the requestor asks for the “number of sales sampled” but does not request that such information be supplied as a “list” or in any other particular format. You make no assertion that the district does not maintain the requested information. Instead, you state that the “only documents that contain the information regarding the number of sales sampled are the sales themselves” and you claim that these documents are excepted from disclosure. Based on your statements, and the submitted information, it is clear that the district does maintain the requested sales numbers. Thus, while the district need not distill the requested information into the form of a list, it must nevertheless release information that it in good faith believes to be responsive to the request unless such information may or must be withheld pursuant to one of the Act’s exceptions to disclosure.

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 of the Tax Code provides the following:

(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.

(b) Information made confidential by this section may be disclosed:

(5) for statistical purposes if in a form that does not identify specific property or a specific property owner.

Tax Code § 22.27(a), (b)(5). You state that the district “sends letters to buyers and sellers of property asking them for sales information, and promising them that the information will be kept confidential.” You also state that “[t]here is no requirement that the information obtained from a property owner in connection with the appraisal of their property have been obtained under a promise of confidentiality.” You do not assert that all of the responsive sales information obtained from property owners by the district was obtained under a promise of confidentiality. Therefore, to the extent that the district obtained the responsive sales information from property owners under a promise of confidentiality, that information is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code. The district must release any responsive sales information that it did not obtain from property owners under a promise of confidentiality. To the extent that the district has statistical information responsive to the request that is in a form that complies with section 22.27(b)(5), that information may be released.

You also assert that some of the 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. 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). 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). Although, as the requestor states, section 552.148 was not effective at the time that some of the requested information was created, absent contrary legislative mandate, newly adopted exceptions to the Act are applied to records as of the effective date of the exception. *See Houston Indep. Sch. Dist. v. Houston Chronicle Publ’g Co.*, 798 S.W.2d 580 (Tex. App.—Houston [1st Dist.] 1990, writ denied); *see also* Open Records Decision No. 600 (1992). Here, the district states that some of the information at issue consists of real property sales information obtained from realtors, private appraisers, and other 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. Accordingly,

we will determine whether the information obtained from non-multiple listing service entities is proprietary information.

Section 552.305 of the Government Code permits an interested third party to submit to this office within ten days of receiving notification of the request reasons why requested information should not be released. *See* Gov't Code § 552.305; *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have not received comments from any affected non-multiple listing services. However, on behalf of these entities you assert that their information is excepted under section 552.110 of the Government Code. Section 552.110(b) of the Government Code protects “[c]ommercial 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). This exception to disclosure 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. *Id.*

You contend that the release of information obtained from non-multiple listing service entities would cause these entities substantial competitive harm. Specifically, you argue that releasing the information would put the non-multiple listing service entities at a disadvantage by decreasing the value of their services. After reviewing your arguments and the submitted information, however, we find that you have made only conclusory allegations that release of the information obtained from non-multiple listing service entities 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). Thus, information obtained from non-multiple listing service entities may not be withheld on the basis of section 552.110(b).

In summary, to the extent that the district obtained responsive sales information from property owners under a promise of confidentiality, that information is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code. To the extent that the district has statistical information responsive to the request that is in a form that complies with section 22.27(b)(5), that information may be released. Requested information that was obtained from a multiple listing service or other similar entity is confidential under section 552.148. Any remaining responsive 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).

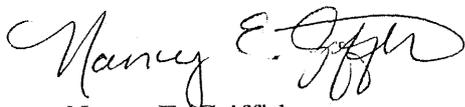
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Nancy E. Griffiths
Assistant Attorney General
Open Records Division

NEG/jb

Ref: ID# 299361

Enc. Submitted documents

c: Mr. Allen W. Junek
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(w/o enclosures)