



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 15, 2008

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

OR2008-00735

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# 299682.

The Brazos County Appraisal District (the "district"), which you represent, received two requests from the same requestor for sales data from sales of commercial property since January 1, 2006, and commercial ratio studies for 2006 and 2007, including all raw data used to create the studies. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.110, and 552.148 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 part of the submitted 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 state that part of the submitted information is sales information that was obtained from property owners. However, you do not inform this office whether the submitted information was provided to the district under a confidentiality agreement. In fact, you 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 [sic] obtained under a promise of confidentiality.” Section 22.27(a), however, states that “information voluntarily disclosed to an appraisal office . . . about real or personal property sales prices *after a promise it will be held confidential*, [is] confidential and not open to public inspection.” *Id.* (emphasis added). Upon review of your arguments, we find that you have failed to demonstrate that the submitted information was provided to the district by property owners under an agreement of confidentiality. Therefore, the submitted information may not be withheld under section 552.101 in conjunction with section 22.27(a) of the Tax Code.

Next, you assert that part 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(a). You state that part of the 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); *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, for information obtained from realtors and private appraisers, we find the information is confidential under section 552.148. For information obtained from other private entities, we find that, 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 at issue is not confidential under section 552.148 of the Government Code and may not be withheld on that basis.

You also assert that the submitted information is excepted from disclosure under section 552.110(b) of the Government Code, which 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 the submitted information would cause substantial competitive harm to the property owners to which the information pertains. Specifically, you argue that releasing the information would put the property owners at a disadvantage when negotiating rental prices and future sales prices. You also contend that the release of the submitted information would cause substantial competitive harm to the realtors, private appraisers, and other private entities from whom it was obtained. You argue that releasing the information would put the realtors and private appraisers 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 remaining information 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, none of the submitted information may be withheld on the basis of section 552.110(b).

In summary, to the extent the submitted information was obtained from realtors, private appraisers, multiple listing services, or other similar entities, it must be withheld under section 552.148 of the Government Code. To the extent the submitted information was not obtained from realtors, private appraisers, multiple listing services, or other similar entities, it 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 299682

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)