



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2008

Mr. L. Joseph James
Staff Attorney - Administrative Law Section
Texas General Land Office
P. O. Box 12873
Austin, Texas 78711

OR2008-00894

Dear Mr. James:

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 #300889.

The Texas General Land Office (the "GLO") received two requests from the same requestor for information pertaining to GLO and School Land Board purchases and sales of public land since January 1, 2003. You state that you do not maintain information responsive to the request for the "reason the property was sold."¹ You also state that, upon receipt of copying fees, you will release much of the responsive information to the requestor. *See* Gov't Code § 552.2615 (Required Itemized Estimate of Charges). You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.²

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

²We note that in your letter dated November 29, 2007, you withdrew your assertions under sections 552.103, 552.104, 552.105, 552.110, 552.113, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code.

We have considered the exception you claim and reviewed the submitted representative samples of information.³

You state that most of the information at issue, labeled Attachment B, was the subject of a previous ruling from this office. In Open Records Letter No. 2007-11968 (2007), we determined that information at issue pertaining to the pending sale of real property must be withheld under section 552.101 of the Government Code in conjunction with section 11.086(a) of the Natural Resources Code. You state that the law, facts, and circumstances have not changed since the issuance of that prior ruling.⁴ Accordingly, the GLO may continue to rely on our prior ruling with respect to Attachment B. *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001). We now turn to your arguments regarding the remaining information at issue.

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 made confidential by other statutes. You raise section 552.101 in conjunction with section 11.086(a) of the Natural Resources Code. Section 11.086(a) provides in relevant part as follows:

Information relating to the development, location, purchase price, or sale price of real property developed, purchased, or sold by or for the School Land Board, Veterans' Land Board, land office, or commissioner under authority granted by this code, including a contract provision related to the development, purchase, or sale of the property, is confidential and exempt from disclosure under [the Act], until all deeds for the property that are applicable to the transaction or series of related transactions are executed and until all substantive performance or executory requirements of applicable contracts have been satisfied. Information that is confidential and exempted from disclosure under this subsection includes an appraisal, completed report, evaluation, or investigation conducted for the purpose of locating or

³We assume that the representative samples of records submitted to this office are 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.

⁴The four criteria for this type of "previous determination" are 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) of the Government Code; 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 attorney general's 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 attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

determining the purchase or sale price of the property, or any report prepared in anticipation of developing, purchasing, or selling real property.

Nat. Res. § 11.086(a). You state that the information you highlighted in Attachment C relates to the sale price of real property sold by or for the School Land Board under authority granted by the Natural Resources Code. You also inform this office that the “executory requirements of applicable contracts have not been satisfied” regarding the property at issue. Based on your representations and our review, we find that the information you highlighted within Attachment C is confidential under section 11.086(a) of the Natural Resources Code and must be withheld under section 552.101 of the Government Code.

In summary, the GLO may continue to rely on Open Records Letter No. 2007-11968 with regards to Attachment B. The GLO must withhold the information you have highlighted within Attachment C under section 552.101 of the Government Code in conjunction with section 11.086(a) of the Natural Resources Code. The remaining information must be released to the requestor.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 300889

Enc. Submitted documents

c: Ms. Lauren Reinlie
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(w/o enclosures)