



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2008

Mr. James G. Nolan
Assistant General Counsel
Texas Comptroller of Public Accounts
P. O. Box 13528
Austin, Texas 78711

OR2008-06333

Dear Mr. Nolan:

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# 308168.

The Texas Comptroller of Public Accounts (the "comptroller") received requests for information related to the annual property value studies conducted for Matagorda, Van Vleck, Claude, Jefferson, Glen Rose, Breckenridge, Stephenville, Mount Pleasant, and Hughes Springs Independent School Districts. You state that you are releasing some information to the requestor. You claim that the responsive Multiple Listing Services ("MLS") printouts are excepted from disclosure under sections 552.101 and 552.148 of the Government Code. You also inform us that release of these printouts could implicate the proprietary interests of three third parties. Accordingly, you state, and provide documentation showing, that you notified North Texas Real Estate Information Systems, Inc. ("NTREIS"), the Matagorda County Board of Realtors ("MCBR"), and the Texarkana Board of Realtors ("TBR") of the request and of their opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *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 the applicability of exception to disclose under Act in certain circumstances). We have received comments from representatives of NTREIS and MCBR. We have considered the submitted arguments and reviewed the submitted representative

sample of information.¹ 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).

Initially, you acknowledge, and we agree, that the comptroller failed to submit its request for a decision from this office within ten business days of its receipt of the written request for information, as required by section 552.301(b). *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). In this instance, third party interests and sections 552.101 and 552.148 of the Government Code can provide compelling reasons to overcome this presumption. Therefore, we will consider whether your claimed exceptions to disclosure or third party interests require the comptroller to withhold the submitted information.

You assert the submitted information is excepted under section 552.101 of the Government Code, which 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 403.304 of the Government Code provides:

(a) All information the comptroller obtains from a person, other than a government or governmental subdivision or agency, under an assurance that the information will be kept confidential, in the course of conducting a study of school district values is confidential and may not be disclosed except as provided in Subsection (b).

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

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

¹ We 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.

(2) to the person who gave the information to the comptroller; or

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

Gov't Code § 403.304. You inform us that the information at issue was obtained from NTREIS, a non-governmental entity, in the course of conducting the comptroller's Annual Property Value Survey, a study required under section 403.302 of the Government Code that evaluates school district property values. *See* Gov't Code § 403.302. You inform us that the information was obtained pursuant to subscription agreements with NTREIS, MCBR, and TBR, all of which incorporate each entity's Rules and Regulations. These Rules and Regulations all state that the information will be considered confidential by the comptroller. Thus, we agree that the comptroller obtained the information under assurances that it will be kept confidential. You also state that none of the exceptions to confidentiality set forth in subsection 403.304(b) applies in this instance. Based on your representations and our review, we agree that the submitted information is confidential under section 403.304(a) of the Government Code.

You also raise section 552.148 of the Government Code, which provides in relevant part, "[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 the submitted information consists of MLS information obtained from private entities. Based on your representations and our review of the information at issue, we find that the information is excepted from disclosure under section 552.148(a) of the Government Code.

However, section 403.303 of the Government Code provides that a school district may protest the comptroller's findings in the study by filing a petition with the comptroller. *See* Gov't Code § 403.303. Subsection (c) of section 552.148 provides in relevant part:

[n]otwithstanding Subsection (a) or Section 403.304, Government Code, so as to assist a property owner, a school district, or an appraisal district in a protest filed under Section 403.303, Government Code, the property owner, the district, or an agent of the property owner or district 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.

Gov't Code § 552.148(c). Thus, section 552.148(c) provides access to information that is otherwise confidential under sections 403.304 and 552.148. The requestor asserts, and you do not dispute, that he represents the school districts at issue; however, you state that none

of the school districts had filed a protest under section 403.303 on the date that the comptroller received the request for information. Therefore, we agree that the requestor does not have access to the submitted information pursuant to section 552.148(c). Consequently, the comptroller must withhold the submitted information under section 552.148(a) of the Government Code and under section 552.101 in conjunction with section 403.304(a) of the Government Code.²

You also ask this office to issue a previous determination permitting the comptroller to withhold "information protected under Tex. Gov't Code § 403.304, without requesting a ruling under § 552.101." We decline to issue such a previous determination at this time.

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).

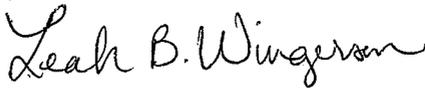
²As our ruling is dispositive, we do not address the other arguments to withhold the submitted information. However, we note that, should the requestor make a new request for the information at issue after the filing of protests on behalf of the districts, pursuant to section 552.148(c), the comptroller may not withhold the information at issue under section 552.148(a) or 403.304(a). *See* Gov't Code § 552.148(c).

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/eeg

Ref: ID# 308168

Enc. Submitted documents

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