



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2008

Mr. Phong P. Phan  
General Counsel  
Travis County Appraisal District  
P.O. Box 149012  
Austin, Texas 78714-9012

OR2008-07611

Dear Mr. Phan:

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# 311870.

The Travis Central Appraisal District (the "district") received a request for specified mass appraisal reports and supporting material. You indicate that the district sought and received clarification from the requestor. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). You state that you will release a portion of the requested information, including the actual appraisal reports. 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 information.

Initially, we must address the district's procedural obligations under the Act. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(a), (b). You state the district received the request for information on March 3, 2008. However, you did not request a ruling from this office until March 31, 2008. Although you state that the requestor and the district agreed to extend the deadline for response to March 31, 2008, we note that the deadlines contained in section 552.301 of the Government Code are fixed by statute and cannot be altered by agreement. *See* Open Records Decision Nos. 541 at 3 (1990), 514 at 1-2

(1988), Attorney General Opinion JM-672 (1987). Consequently, we find that the district failed to comply with the requirements of section 552.301 in requesting this decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested 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 from disclosure. *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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See Open Records Decision No. 630* (1994). Thus, because sections 552.101 and 552.148 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address your arguments.

You assert that Exhibit D 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 inform this office that the sales 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. We note however, that a portion of the information in Exhibit D consists of general valuation charts and models, market adjustments, proformas, sample value calculations, boundary descriptions, and property lists created by the district and not received from a private entity. You have failed to demonstrate how section 552.148 is applicable to this information, and thus, it may not be withheld on this basis.

Section 552.101 of the Government Code exempts 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 the remaining 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). However, as stated above, the remaining information consists of documents created by the district that were not received from a private entity or property owner. Thus, because the remaining information was not provided to the district by property owners under an agreement of confidentiality, this information may not be withheld under section 552.101 in conjunction with section 22.27(a) of the Tax Code. As you raise no other exception to disclosure of this remaining information, it must be released to the requestor. We note that because you have submitted the information at issue in electronic form we have not marked all of the remaining information that must be released. However, we have printed an example of each type of document that must be released, and these documents will be returned to the district for reference in complying with this ruling.

In summary, with the exception of the type of documents we have printed and returned for your reference, which must be released, you may withhold Exhibit D under section 552.148 of the Government Code.

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).

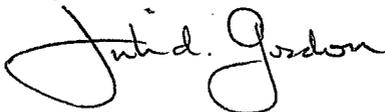
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/eeg

Ref: ID# 311870

Enc. Submitted documents

c: Ms. Abbigail Pendergraft  
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(w/o enclosures)