



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2008

Mr. Joseph T. Longoria
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.
1235 North Loop West Suite 600
Houston, Texas 77008

OR2008-10986

Dear Mr. Longoria:

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# 318801.

The Montgomery Central Appraisal District (the "district"), which you represent, received a request for information associated with the appraisal for the property at a specified address. You state that some of the requested information either has been or will be released. You have submitted information that the district seeks to withhold under sections 552.101 and 552.148 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

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 exception encompasses information protected by other statutes. You raise section 552.101 in conjunction with section 22.27(a) of the Tax Code, which provides as follows:

¹To the extent that you have submitted a representative sample of the responsive information, this letter ruling assumes that the submitted information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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). We understand that the district is an "appraisal office" for the purposes of section 22.27(a). You indicate that some of the submitted information is income and expense information as well as sales information that was obtained from property owners under promises of confidentiality. We agree that the district must withhold any such information under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code.

Section 552.148 of the Government Code provides in 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). 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 ("MLS") to appraisal districts under confidentiality agreements is subject to required public disclosure under the Act. *See* 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 MLS 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 MLS and appraisal districts to continue. HOUSE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. Comm. Substitute H.B. 2188, 80th Leg., R.S. (2007). Accordingly, because realtors and private appraisers provide information to MLS, any submitted real property sales information that was obtained from realtors and private appraisers is confidential under section 552.148 of the Government Code. We also find that any remaining real property sales information obtained from an MLS or other similar entity is confidential under section 552.148. To the extent that any remaining information was not obtained from such an entity, it is not confidential under section 552.148.

In summary: (1) the district must withhold any submitted income and expense information or sales information that was obtained from property owners under promises of confidentiality under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code; and (2) the district must withhold any submitted information that was obtained from realtors and private appraisers or from an MLS or other similar entity under section 552.148 of the Government Code. Any submitted information that is not confidential under section 22.27 of the Tax Code or section 552.148 of the Government Code 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). If the governmental body does not file suit over 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jh

Ref: ID# 318801

Enc: Submitted documents

c: Mr. Foster McNair
135 East Mistybreeze Circle
The Woodlands, Texas 77381
(w/o enclosures)