



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2008

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

OR2008-11188

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# 319286.

The Montgomery Central Appraisal District (the "district"), which you represent, received a request for a copy of the information that the district plans to introduce at the requestor's appraisal review board hearing, as well as all comparable sales in 2007 for the requestor's neighborhood by neighborhood code. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code.¹ In addition, you assert that release of the requested information may implicate the privacy or proprietary interests of third parties, although you do not inform us that you notified any third party of this request. *See* Gov't Code § 552.305(d) (requiring governmental body to notify person whose proprietary information is requested); *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 applicability of exception to disclosure in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

¹Although the district also claims that the submitted information is excepted from disclosure under section 552.305, we note that section 552.305 is not an exception to disclosure. Section 552.305 permits a governmental body to decline to release information for the purpose of requesting an attorney general decision if it believes a person's privacy or property rights may be implicated by a request. *See* Gov't Code § 552.305(a); Open Records Decision 542 (1990).

Initially, we must address the district's obligations under the Act, chapter 552 of the Government Code. 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* Gov't Code § 552.301(a), (b). Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). You inform us that the district received this request on May 27, 2008. However, you did not ask for an attorney general's decision until June 11, 2008, and you did not submit the information at issue and your general written comments stating why the stated exceptions apply until June 18, 2008.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the 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 to overcome this presumption. *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 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 under other law. Open Records Decision No. 150 (1977). Because sections 552.101 and 552.148 of the Government Code can provide a compelling reason to withhold information, we will address your arguments under these exceptions.

Section 552.101 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, such as section 22.27 of the Tax Code. Section 22.27(a) reads as follows:

(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 the submitted information consists of confirmed neighborhood sales. You further state that this information is derived from sales disclosures, income expense information, rendition statements, settlement statements, and closing settlements provided by private entities and individual taxpayers under a promise of confidentiality. You assert that the district has no other access to this type of information other than its voluntary disclosure by individual taxpayers and other sources. You state that none of the permissible disclosures in subsection (b) of section 22.27 applies in this instance. Based on your representations and our review, we find that section 22.27 is applicable to the submitted information to the extent it consists of information provided by property owners and obtained from rendition statements, real and personal property reports, attachments to those statements and reports, income and expense information, and sales price information the property owner voluntarily disclosed after a promise of confidentiality.

You also assert that the information at issue is excepted under section 552.148 of the Government Code. Section 552.148 (a) 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). Subsection (b) of section 552.148 reads as follows:

Notwithstanding Subsection (a), the property owner or the owner’s agent may, on request, obtain from the chief appraiser of the applicable appraisal district a copy of each item of information described by Section 41.461(a)(2), Tax Code, and a copy of each item of information that the chief appraiser took into consideration but does not plan to introduce at the hearing on the protest. In addition, the property owner or agent may, on request, obtain from the chief appraiser comparable sales data from a reasonable number of sales that is relevant to any matter to be determined by the appraisal review board at the hearing on the property owner’s protest. Information obtained under this subsection:

- (1) remains confidential in the possession of the property owner or agent; and
- (2) may not be disclosed or used for any purpose except as evidence or argument at the hearing on the protest.

Id. §552.148(b). Section 41.461(a)(2) of the Tax Code states that at least 14 days before a hearing on a protest, the chief appraiser shall inform the property owner that the owner or the owner’s agent may inspect and obtain a copy of the data, schedules, formulas, and all

other information the chief appraiser plans to introduce at the hearing to establish any matter at issue. *See* Tax Code 41.461(a)(2).

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). 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). Thus, section 552.148 applies to any real property sales information obtained from multiple listing services or other similar entities. Further, because realtors and private appraisers provide information to multiple listing services, section 552.148 also applies to any real property sales information that was obtained from realtors and private appraisers.

You state that the requested information includes information that was obtained by the district from a private entities such as an appraiser or multiple listing service under a promise of confidentiality. You also state that "the [d]istrict has not been authorized to release this information," and "did not consider it in the appraisal of the subject property." You further state that when the district received this request for information, "there was no protest pending." Based on the district's representations, we conclude that to the extent the information was obtained from a multiple listing service, realtor, or private appraiser, the information is confidential under section 552.148 (a). To the extent the information was not obtained from such an entity, the information is not confidential under section 552.148 of the Government Code and may not be withheld on that basis.

In summary, to the extent the information at issue consists of information provided by property owners and obtained from rendition statements, real and personal property reports, attachments to those statements and reports, income and expense information, and sales price information the property owner voluntarily disclosed after a promise of confidentiality, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. To the extent the requested information was obtained from realtors, private appraisers, or multiple listing services, it must be withheld under section 552.148 of the Government Code. To the extent the requested information was not obtained from such sources or 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). 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/jh

Ref: ID# 319286

Enc. Submitted documents

c: Mr. Charles W. Caillouet, Jr.
119 Victoria Drive West
Montgomery, Texas 77356
(w/o enclosures)