



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2008

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

OR2008-11995

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# 320577.

The El Paso Central Appraisal District (the "district"), which you represent, received four requests from the same requestor for "[all information] that the chief appraiser plans to introduce at the [scheduled protest] hearing" pertaining to several specified properties. You state that some responsive information has been or will be released to the requestor, but 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 representative sample of information.²

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; instead, it permits a governmental body to decline to release information for the purpose of requesting an attorney general decision if it believes that a person's privacy or property interests may be involved. *See* Gov't Code § 552.305(a); Open Records Decision No. 542 at 1-3 (1990) (discussing statutory predecessor).

²We 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.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code § 552.301(e)(1)(D)*. You state that you received the first request on June 10, 2008. However, the district did not submit the information at issue until July 3, 2008. Accordingly, we conclude that the district failed to comply with the procedural requirements mandated by section 552.301 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 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). Normally, a compelling reason is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because sections 552.101 and 552.148 of the Government Code can provide compelling reasons to withhold information, we will address the applicability of these exceptions to the requested information.

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 protected by other statutes. You contend that part of the requested 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). You state that the submitted information consists of confirmed 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, and income and expense information. Further, section 22.27 is applicable to any voluntarily disclosed sales price information to the extent such information was obtained from the property owners under a promise of confidentiality.

You also assert that some of the information at issue 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. You state that the requested information consists of sales data obtained from Multiple Listing Services, realtors, and private appraisers. 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). Accordingly, because realtors and private appraisers provide information to multiple listing services, we find that the real property sales information that was obtained from realtors and private appraisers is confidential under section 552.148(a). We also find that, to the extent the real property sales information was obtained from multiple listing services or other similar entities, any such information is confidential under section 552.148(a). To the extent any such information was not obtained from such an entity, it is not confidential under section 552.148 of the Government Code.

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). Thus, a property owner or the owner's designated agent has a right of access to certain information that is confidential under section 552.148(a). Although you state that section 552.148(b) does not apply in this instance because there was no protest pending at the time of the instant request, the requestor, in her request letters, has provided a list of properties which have set Appraisal Review Board protest hearings. Therefore, we find that protests were pending at the time of the request. We also note that the requestor asserts a right of access to the requested information under section 41.461 of the Tax Code. 41.461 provides in relevant part:

- (a) At least 14 days before a hearing on a protest, the chief appraiser shall:
 - (2) inform the property owner that the owner or the agent of the owner may inspect and may 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[.]

Tax Code § 41.461(a)(2). In this instance, the requestor is a property tax consultant and indicates she is the designated agent of the property owners at issue. Section 1.111 of the Tax Code governs a property owner's authority to designate an agent to act on the owner's behalf in property tax matters: *See* Tax Code § 1.111(a)-(i); *see also* Op. Tex. Att'y Gen. No. GA-O559 (2008). Under section 1.111(b), a designation of agent: (1) "must be made by written authorization signed by the owner, a property manager authorized to designate agents for the owner, or other person authorized to act on behalf of the owner," and (2) "must clearly indicate that the person is authorized to act on behalf of the property owner in property tax matters relating to the property or the property owner." Tax Code § 1.111(b).

Furthermore, the comptroller has developed the following requirements for designating an agent:

(a) Except as provided by subsection (m) of this section, a property owner shall use comptroller form 50-162-1 to designate an agent for property tax matters. For the purposes of this section, the term "property owner" includes a person who claims a legal interest in the property.

...

(c) *The appointment of an agent under subsection (a) of this section is not binding on an appraisal district until the designation form is filed with the district. . . .* The property owner shall indicate the date the owner appoints the agent on the designation form. If the property owner files forms designating more than one agent to act in the same capacity for the same item of property, the form bearing the later date of appointment revokes the form bearing the earlier date, as of the date the form bearing the later date is filed[.]

34 T.A.C. § 9.3044(a), (c) (emphasis added). Thus, only upon submission of the proper form may a property owner designate another person to act as that owner's agent with regard to property tax matters. In this instance, we are unable to determine whether the proper form has been submitted to the district designating the requestor to be the property owners' agent with regard to the protests. Thus, to the extent the requestor is the designated agent of the property owners at issue, the district must provide any portion of the requested information that the chief appraiser plans to introduce at the hearings. If the requestor is not the designated agent of the property owners at issue, 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 it consists of information provided by property owners and obtained from rendition statements, real and personal property reports, attachments to those statements and reports, and income and expense information. To the extent the submitted sales information was obtained from property owners under promises of confidentiality, that information is also confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101. To the extent the submitted information was obtained from realtors, private appraisers, multiple listing services or other similar entities, that information must be withheld under section 552.148 of the Government Code. Any remaining responsive information 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 320577

Enc. Submitted documents

c: Ms. Yvonne Collins
4529 Monahans
El Paso, Texas 79924
(w/o enclosures)