



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 16, 2009

Ms. Ashley Allen  
Legal Services Division  
Texas General Land Office  
P.O. Box 12873  
Austin, Texas 78711-2873

OR2009-06467A

Dear Ms. Allen:

This office issued Open Records Letter No. 2009-06467 (2009) on May 13, 2009. In that ruling, we determined that the submitted information may be withheld pursuant to a previous determination issued by this office. After this office issued Open Records Letter No. 2009-06467, we determined that the Texas General Land Office (the "GLO") had provided additional responsive information. As this information was not addressed in the prior ruling, we will reconsider the ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on May 13, 2009. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of the Act).

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# 343141.

The GLO received a request for the sale data confirmation, including the purchase price of specified tracts, pertaining to specified property transfers. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that although the requestor seeks information pertaining to specified property transfers, you have submitted a purchase option contract between the GLO and a joint venture of two land management companies, in addition to a list of completed transactions. However, you inform us that the submitted information is the only information held by the GLO responsive to the present request, and that the GLO has made a good-faith

effort to relate the present request for information to information that the GLO holds. See Open Records Decision No. 561 (1990). We note that the Act generally does not require a governmental body to obtain information not in its possession or create new information in response to an open records request. See Open Records Decision Nos. 599 (1992), 534 (1989). Accordingly, we will address your arguments against the disclosure of the submitted information.

However, we note that portions of the submitted information concern completed transactions that occurred after the date the present request for information was received by the GLO. Thus, this information was not in existence when the GLO received the request for information; therefore it is not responsive to the request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983). This decision does not address the public availability of the nonresponsive information, and the GLO need not release that information to the requestor.

Next, you inform us that at least portions of the submitted information were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2007-07970 (2007). In that decision we ruled that the GLO may withhold the information at issue under section 552.104 of the Government Code. As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the GLO may continue to rely on that ruling as a previous determination and withhold the portions of the submitted information that were previously ruled upon in accordance with the prior ruling.<sup>1</sup> See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we note that portions of the submitted information were created after the date we issued Open Records Letter No. 2007-07970. Consequently, this information is not subject to the previous determination, and it may not be withheld on that basis.

Regarding the information not subject to the previous determination, you acknowledge that the GLO failed to meet the deadlines prescribed by section 552.301(e) of the Government Code in submitting this portion of the requested information beyond the fifteen day deadline. See Gov't Code § 552.301(e). 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.

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<sup>1</sup>As our ruling is dispositive of this information, we need not address your arguments against its 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 section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You raise only section 552.101 for the untimely submitted information. Because section 552.101 can provide a compelling reason for non-disclosure, we will consider the GLO's argument under this exception.

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 made confidential by other statutes. You raise section 552.101 in conjunction with section 11.086(a) of the Natural Resources Code. Section 11.086(a) provides in relevant part as follows:

Information relating to the development, location, purchase price, or sale price of real property developed, purchased, or sold by or for the School Land Board, Veterans' Land Board, land office, or commissioner under authority granted by this code, including a contract provision related to the development, purchase, or sale of the property, is confidential and exempt from disclosure under [the Act], until all deeds for the property that are applicable to the transaction or series of related transactions are executed and until all substantive performance or executory requirements of applicable contracts have been satisfied. Information that is confidential and exempted from disclosure under this subsection includes an appraisal, completed report, evaluation, or investigation conducted for the purpose of locating or determining the purchase or sale price of the property, or any report prepared in anticipation of developing, purchasing, or selling real property.

Nat. Res. Code § 11.086(a). You state that the submitted information pertains to contracts for which "all substantive performance or executory requirements . . . have not been satisfied." Further, you state that "[t]his real estate transaction is still pending, and . . . the release of these documents will impact [the GLO's] ability to complete the real estate transaction." Based on your representations and our review, we find that the remaining responsive information is confidential under section 11.086(a) of the Natural Resources Code and must be withheld under section 552.101 of the Government Code.

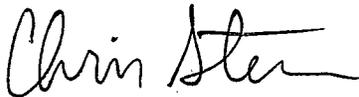
In summary, (1) the GLO need not release nonresponsive information that was created after the date of the present request for information; (2) to the extent the submitted information was ruled upon in Open Records Letter No. 2007-07970, the GLO may continue to rely on that ruling as a previous determination and withhold such information in accordance with the prior ruling; and (3) the GLO must withhold the remaining responsive information under

section 552.101 of the Government Code in conjunction with section 11.086(a) of the Natural Resources Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 343141

Enc. Submitted documents

c: Requestor  
(w/o enclosures)