



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2009

Ms. Susan K. Durso
General Counsel
Texas Residential Construction Commission
P.O. Box 13509
Austin, Texas 78711-3509

OR2009-07577

Dear Ms. Durso:

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# 344088 (TRCC Public Information Request #2575).

The Texas Residential Construction Commission (the "commission") received a request for a complete listing of homes, with addresses, registered with the commission and built by a specified home builder.¹ You claim that the home addresses in the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the commission's obligations under section 552.301 of the Government Code. Section 552.301 prescribes 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(b) of the Government Code, a governmental body that receives a request for information that it wishes to withhold must ask for an attorney general's decision and state the exceptions that apply within ten business days of receiving

¹The commission sought and received a clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

the request. *See* Gov't Code § 552.301(a), (b). You state that the department received this request on February 27, 2009. However, your request for a decision from this office was sent to this office via interagency mail on March 20, 2009, well past the ten-day deadline. We therefore find that the commission has failed to comply with the requirements of section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the 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); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). You claim that the addresses in the submitted information are confidential under section 552.101 of the Government Code in conjunction with section 409.003 of the Property Code. Because the application of section 552.101 can provide a compelling reason for non-disclosure under section 552.302, we will consider your claim under section 409.003 for the submitted addresses.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information made confidential by other statutes. You claim section 409.003 of the Property Code for the submitted addresses, which provides in relevant part as follows:

(d) The commission shall make available to the public information about each complaint that resulted in disciplinary action by the commission.

(e) The commission may not disclose the address of any individual home registered with the commission when making information available to the public under this title, except as necessary to implement this title.

(f) Notwithstanding Subsections (d) and (e), the commission may not disclose the address of an individual home registered with the commission:

(1) on the commission's Internet website; or

(2) in connection with an open records request under Chapter 552, Government Code.

Prop. Code § 409.003(d)-(f). You indicate that the addresses at issue are the addresses of individual homes registered with the commission. Based on your representation and our review, we find that the addresses at issue must be withheld under section 552.101 in

conjunction with section 409.003(f)(2) of the Property Code. The remaining information must be released to the requestor.

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, 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/dls

Ref: ID# 344088

Enc. Submitted documents

c: Requestor
(w/o enclosures)