



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 7, 2010

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483

OR2010-04913

Dear Ms. Alexander:

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# 375128.

The Texas Department of Transportation (the "department") received a request for a specified appraisal report pertaining to the requestor's property. You claim that the requested information is excepted from disclosure under section 552.111 of the Government Code and privileged under rule 192.3 of the Texas Rules of Civil Procedure. We have considered your claims and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that the requestor claims the information at issue should be released based on section 21.0111(a) of the Property Code. Section 21.0111(a) provides as follows:

A governmental entity with eminent domain authority that wants to acquire real property for a public use shall disclose to the property owner at the time an offer to purchase is made any and all existing appraisal reports produced or acquired by the governmental entity relating specifically to the owner's property and used in determining the final valuation offer.

Prop. Code § 21.0111(a). This provision expressly requires a governmental body with eminent domain authority, at the time it makes an offer to purchase property, to furnish "any and all existing appraisal reports . . . used in determining the final valuation offer" to the property owner. *Id.* The Supreme Court has stated chapter 21 of the Property Code "must be strictly followed and its protections liberally construed for the benefit of the landowner." *John v. State*, 826 S.W.2d 138, 140 (Tex. 1992). Thus, we believe each appraisal produced or acquired by the department during the appraisal process, "relating specifically to the owner's property," is "used in determining the final valuation offer" made to the property owner. *Id.*

You state the department has disclosed to the requestor the appraisal report used in determining the final valuation offer. You assert the requested appraisal report was not used in determining the final valuation offer. The requestor maintains the department "used" the requested appraisal report indirectly in determining the final valuation offer by comparing it with the disclosed report and determining that the department wanted a second appraisal of the property. Pursuant to section 552.303 of the Act, we requested further explanation of the department's claim under section 21.0111.<sup>1</sup> In response, you have informed us that the department "hired an appraiser [who] used a capitalization rate which is considered not in the reasonable range of rates at the time." You further state the department did not accept the first appraisal "as a final work product under the contract[, and] obtained a second appraisal which produced a cap rate more in line with . . . the 'norm' in the area." You explain the department "approved the second appraisal for use as a final appraisal report."

Upon review, we find that the submitted appraisal report relates specifically to the owner's property, was acquired or produced by the department during the appraisal process, and was used in determining the final valuation offer made to the property owner. Therefore, the submitted appraisal report must be released to the property owner pursuant to section 21.0111 of the Property Code. In this instance, the requestor is the owner of the property.

You seek to withhold the submitted information under section 552.111 of the Government Code and rule 192.3 of the Texas Rules of Civil Procedure. However, we need not decide whether either of these provisions apply. Even assuming that one or both provisions apply, section 21.0111 is a more specific provision. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 623

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<sup>1</sup>See Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by Gov't Code § 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice).

at 3 (1994) (exceptions in Act inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 598 (1991) (statutes governing access to specific subset of information held by governmental body prevail over generally applicable Act), 478 (1987) at 2-3 (Act does not govern special rights of access granted under other statutes), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Because the requestor, in this instance, has a statutory right of access to the submitted information under section 21.0111, the department may not withhold the information at issue under section 552.111 of the Government Code or rule 192.3 of the Texas Rules of Civil Procedure. Therefore, the submitted information must be released to the requestor as mandated by section 21.0111 of the Property Code.<sup>2</sup>

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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 375128

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that should the department receive another request for this information from a person who is not the owner of the property at issue, the department should resubmit this same information and request another decision.