



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2014

Mr. James G. Nolan
Associate Deputy General Counsel
Open Records Section
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2014-09750

Dear Mr. Nolan:

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# 525319 (Comptroller ID# 10051884907).

The Texas Comptroller of Public Accounts (the "comptroller") received three requests from the same requestor for price information for properties located within three county appraisal districts, compiled by the comptroller in connection with its required Annual Property Value Study. You state you have released some information to the requestor. You claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of some of the requested information may implicate the proprietary interests of North Texas Real Estate Information Systems, Inc. ("NTREIS"). Accordingly, you state you notified NTREIS of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted representative sample of information.¹

¹We assume 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 note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from NTREIS. Thus, NTREIS has not demonstrated it has a protected proprietary interest in any of the requested information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the comptroller may not withhold the requested information on the basis of any proprietary interests NTREIS may have in the information.

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 section 403.304 of the Government Code, which provides:

(a) A school district, appraisal district, or other governmental entity in this state shall promptly comply with an oral or written request from the comptroller for information to be used in conducting a study, including information that is made confidential by Chapter 552 of this code, Section 22.27, Tax Code, or another law of this state.

(a-1) All information the comptroller obtains from a person, other than a government or governmental subdivision or agency, under an assurance that the information will be kept confidential, in the course of conducting a study is confidential and may not be disclosed except as provided in Subsection (b).

(b) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who gave the information to the comptroller; or

(3) for statistical purposes if in a form that does not identify specific property or a specific property owner.

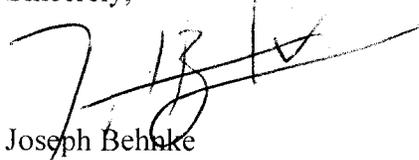
Id. § 403.304. You inform us that the information at issue is Multiple Listing Service data consisting of real estate sales and valuation information obtained by NTREIS, a non-governmental entity. You state that the information was obtained in the course of conducting the comptroller's Annual Property Value Survey, a study required under section 403.302 of the Government Code that evaluates school district property values. *See id.* § 403.302. Further, you inform us that the information was obtained under an assurance that the information will be kept confidential by the comptroller. You also state that none

of the exceptions to confidentiality set forth in subsection 403.304(b) apply in this instance. Based on your representations and our review, we agree the information you have marked is confidential under section 403.304(a-1) of the Government Code. Accordingly, the comptroller must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 403.304(a-1) of the Government Code. The remaining information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Joseph Behrke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 525319

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Felicia Peters
President
North Texas Real Estate Information Services
1950 North Stemmons Freeway
Dallas, Texas 75207
(w/o enclosures)