ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2006

Mr. Joseph J. Gorfida, Jr.
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2006-00477

Dear Mr. Gorfida:

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# 240277.

The Dallas Central Appraisal District (the "DCAD"), which you represent, received a request for a copy of the current parcel shape files for Dallas County (the "GIS data") and the current certified appraisal database. You state that the DCAD will release a copy of the certified appraisal database in CD format. You claim that the GIS data is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Initially, we must address the DCAD's obligations under the Act. Pursuant to section 552.301(e), the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You inform us that the DCAD received this request on October 26, 2005. As of this date, you have not submitted to this office a copy or representative sample of the information requested. Consequently, we find that the DCAD failed to comply with the procedural requirements of section 552.301.

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 requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See* Gov't Code § 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). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.101, which excepts from disclosure information deemed confidential by law, can provide a compelling reason to withhold the information from disclosure under section 552.302. You raise section 552.101 in conjunction with the Federal Copyright Act (the "FCA"), title 17 of the United States Code. However, the FCA does not make information confidential. *See* Open Records Decision No. 660 at 5 (1999). This office has concluded that the FCA may not be used to deny access or copies of information subject to the Act. *See id.* In addition, because you have not submitted any responsive information for our review, we have no basis for concluding that there is any compelling reason to withhold the requested information under this exception. We therefore conclude that the information is not excepted from disclosure and the DCAD must release a copy of the GIS data to the requestor.

You indicate, however, that the DCAD has copyrighted the information at issue. You have informed the requestor that the DCAD will sell the GIS data for a license fee of $1000. You also informed the requestor that she is prohibited from selling the GIS data for a commercial purpose.[1] The requestor's response to the DCAD's $1000 license fee is that the fee is excessive and unwarranted. While we note that the fair use of a copyrighted work is not an infringement of copyright, *see* 19 U.S.C. § 107, this office is not the proper forum to address the question of whether the requestor's use here is a fair use under section 107 of the FCA. In addition, if the requestor believes she is being overcharged, she may file a complaint with this office.

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 appeal by

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[1]To the extent the information is subject to copyright protection, the DCAD may place reasonable restrictions on the use of its copyrighted works. *See* 17 U.S.C. §§ 102, 103; Open Records Decision No. 660 at 5.

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal 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 appeal 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,

Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/er

Ref: ID# 240277

Enc. Submitted documents

c: Ms. Holly Hacker
Higher Education Reporter
The Dallas Morning News
P.O. Box 655237
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(w/o enclosures)