



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 28, 2006

Mr. Joseph T. Longoria  
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.  
1235 North Loop West, Suite 600  
Houston, Texas 7700

OR2006-01970

Dear Mr. Longoria:

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# 243291.

The Lubbock County Appraisal District (the "district"), which you represent, received a request for "all data contained in [the district's] commercial comparable sales database" and "a copy of the commercial sales data maintained by any appraisers or modelers, including apartment, office, retail, warehouse, office warehouse, retirement housing, healthcare, hotel/motel, and land." You claim that the submitted information is not subject to the Act. In the alternative, you claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we address your claim that the submitted information is commercially available to the public and is therefore not subject to the Act. Section 552.027 provides in part:

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<sup>1</sup>We assume that 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.

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

Gov't Code § 552.027(a). Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. The legislative history of this provision notes that section 552.027 should exclude from the definition of public information

books and other materials that are also available as research tools elsewhere *to any member of the public*. Thus, although public library books are available for public use, the library staff will not be required to do research or make copies of books for members of the public.

INTERIM REPORT TO THE 74TH LEGISLATURE OF THE HOUSE STATE AFFAIRS COMM., 74th Leg., R.S., SUBCOMMITTEE ON OPEN RECORDS REVISIONS 9 (1994) (emphasis added). Therefore, section 552.027 excludes commercially available research material from the definition of "public information."

You claim that the submitted information "is commercially available to the public." You further state that a portion of the submitted information "is obtained by the [d]istrict from the local multiple listing service" and that the information "is also commercially available to the public." We note that access to a local multiple listing service is generally limited to licensed real estate brokers and appraisers. Where access to information is limited to certain licensed individuals, it cannot be said that such information is available "to any member of the public." Therefore, if the submitted multiple listing service is available to any member of the public, it need not be released in response to a request under the Act pursuant to section 552.027. However, we find you have failed to demonstrate that the remaining information came from the type of commercial book or publication contemplated by section 552.027. *See* Gov't Code § 552.027. Accordingly, we conclude that the submitted information, other than the multiple listing service information, is "public information" and, therefore, subject to the Act. *See id.* § 552.002. To the extent access to the multiple listing service information is limited to particular individuals, the multiple listing service information is not commercially available for purposes of section 552.027 and may only be withheld from disclosure if an exception to the Act applies. Accordingly, we will address the exception you claim.

Next, we must address the district's obligations under the Act. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). You

inform us that the district received this request on December 2, 2005, but you did not request a decision from this office until December 19, 2005. Thus, the district 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 the governmental body demonstrates a compelling reason 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). Because section 552.101 can provide a compelling reason to withhold information, we will address your argument concerning 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 protected by other statutes. Section 22.27 of the Tax Code states in pertinent part:

(a) Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office in connection with the appraisal of the property, including income and expense information related to a property filed with an appraisal office and information voluntarily disclosed to an appraisal office or the comptroller about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized by Subsection (b) of this section.

Tax Code § 22.27(a). We understand that the district is an "appraisal office" for purposes of section 22.27. You state that the requested information "is utilized by the [d]istrict to determine the appraisal value of property for ad valorem tax purposes." You further state that the submitted information "contains sales disclosures and income/expense information related to private entities and citizens" and that "[i]n some cases it includes settlement statements and closing documents related to the purchase of real property by individual tax payers." Finally, you state that the "district has no other access to this type of information

other than the voluntary disclosure of it by a taxpayer” and that the information at issue was “obtained pursuant to a promise of confidentiality.” Thus, we agree that those portions of the submitted information provided to the district by a property owner must be withheld under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. However, you state that the submitted multiple listing service information was “obtained by the [d]istrict from the local multiple listing service.” Therefore, the multiple listing service information is not confidential under section 22.27 and may not be withheld on this basis.

In summary, to the extent the submitted multiple service listings are commercially available to any member of the public, they need not be released in response to this request pursuant to section 552.027 of the Government Code. If access to the submitted multiple service listings is limited to individuals holding certain licenses, then the multiple service listings are “public information” under the Act and are subject to this ruling as discussed below. The submitted information that was provided to the district by property owners pursuant to a promise of confidentiality is confidential under section 22.27 of the Tax Code and must be withheld under section 552.101 of the Government Code. The remaining submitted information must be released.

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 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/segh

Ref: ID# 243291

Enc. Submitted documents

c: Ms. Abbigail Pendergraft  
O'Connor & Associates  
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(w/o enclosures)