

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2006

Mr. Stewart McKeehan
Attorney at Law
1330 East 8th, Suite 100
Odessa, Texas 79761

OR2006-07179

Dear Mr. McKeehan:

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# 253578.

The Ector County Appraisal District (the "district"), which you represent, received a request for two categories of information: (1) any 2005 ratio studies performed or received by the district, including, but not limited to, "overall, commercial, business personal property, residential, or specific land use code studies," and (2) a copy of all sales, assessments, and background data used to compile these ratio studies, as well as any derivative analysis. You state that information responsive to item 1 of the request will be released to the requestor, but claim that portions of 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 representative sample of information.¹

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. You contend that the information you have highlighted is confidential under section 22.27 of the Tax Code, which 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

¹We 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.

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 assert that the information you have highlighted consists of information provided to the district by the Odessa Board of Realtors, Inc. (the "Odessa Board"), formerly known as West Texas Regional MLS, Inc. You state that this sales information was voluntarily disclosed pursuant to a confidentiality agreement. We note, however, that section 22.27(a) protects "information the owner of property provides to the appraisal office in connection with the appraisal of the property[.]" Tax Code § 22.27(a). Thus, as you have not demonstrated that information obtained from the Odessa Board falls within the scope of section 22.27(a), the district may not withhold any information obtained from the Odessa Board on that basis under section 552.101 of the Government Code. *Cf.* Open Records Decision No. 550 at 7 (1990) (Tax Code § 22.27 not applicable to information compiled by private market research firm and provided to appraisal district). As you make no other arguments against disclosure, the submitted information must be released to the requestor.

We note, however, that some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/krl

Ref: ID# 253578

Enc. Submitted documents

c: Ms. Abbigail Pendergraft
O'Connor & Associates, L.P.
2200 N. Loop W., Suite 200
Houston, Texas 77018
(w/o enclosures)

CAUSE NO. D-1-GV-06-001359

ECTOR COUNTY APPRAISAL DISTRICT, §
Plaintiff, §

IN THE DISTRICT COURT

v. §

53rd JUDICIAL DISTRICT

THE ATTORNEY GENERAL OF THE §
STATE OF TEXAS, §
Defendant. §

TRAVIS COUNTY, TEXAS

Filed in The District Court
of Travis County, Texas

DEC 10 2009 TH

At 2:02 P.M.
Amelia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff Ector County Appraisal District and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act ("PIA"), Tex. Gov't Code Ann. ch. 552 (West 2004 & Supp. 2009). The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Abbigail Pendergraft, was sent reasonable notice of the parties' agreement that the District may withhold the information at issue and that the requestor was also informed of, and exercised, her right to intervene in the suit to contest the withholding of this information. However, upon Plaintiff's motion, requestor's intervention was struck on December 3, 2009. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

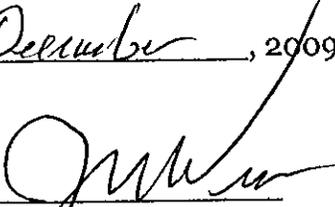
IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, specifically, sales information that was used to compute 2005 ratio studies that the District obtained from a private entity, is excepted from disclosure under Tex. Gov't Code § 552.148(a);

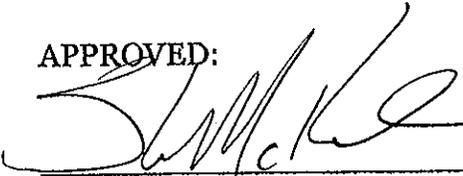
2. The District may withhold from the requestor the information at issue;
3. All costs of court are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff

and Defendant and is a final judgment.

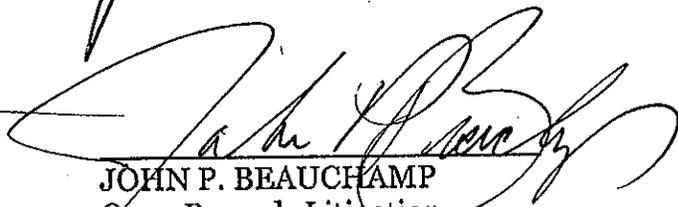
SIGNED this the 10 day of December, 2009.


PRESIDING JUDGE

APPROVED:


STEWART MCKEEHAN
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Odessa, Texas 79761
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ATTORNEY FOR PLAINTIFF


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ATTORNEY FOR DEFENDANT