



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2006

Ms. Diane Ball
Chief Appraiser
Moore County Appraisal District
P.O. Box 717
Dumas, Texas 79029

OR2006-07792

Dear Ms. Ball:

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# 253116.

The Moore County Appraisal District (the "district") received requests for 2005 and 2006 ratio studies and the sales, assessments, and background data used to compile the ratio studies. You state that you will release the requested ratio studies. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. You also assert that the district must withhold the remaining requested information pursuant to an agreement with the local Multiple Listing Service ("MLS"). Further, you indicate that the responsive information is the proprietary information of MLS. Pursuant to section 552.305 of the Government Code, you are required to notify MLS of the request and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered your arguments and reviewed the submitted information.¹

¹We note that you have redacted portions of the submitted documents. As we generally are able in this instance to discern the nature of the redacted information, we will determine whether it is excepted from disclosure. In the future, however, you should refrain from redacting any information that you submit to this office in seeking an open records ruling, unless the information is the subject of a previous determination. *See*

Initially, we note that you have only submitted one page of an MLS listing that is responsive to the request. The requestor seeks “all sales, assessments, and background data used to compile these ratio studies.” To the extent additional responsive information existed on the date the district received the request for information, we assume such information has been released to the requestor. If not, such information must be released at this time. *See* Gov’t Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

An interested third party is allowed ten business days after the date of its receipt of a governmental body’s notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, MLS has not submitted comments to this office explaining why any portion of the submitted information should not be released to the requestor. Thus, MLS has provided us with no basis to conclude that the release of any portion of the submitted information would implicate its proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Accordingly, we conclude that the district may not withhold any portion of the submitted information based on the proprietary interests of MLS.

You assert that the requested information should be withheld from public release because “[a]s a member of MLS, we have agreed to abide by the terms of membership and [b]ylaws.” You state and provide documentation showing that MLS bylaws require members to maintain the confidentiality of MLS information. We note however, that information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any agreement or statement specifying otherwise. *See* Gov’t Code § 552.302.

You also claim that the submitted information is excepted from public disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information made confidential by other statutes. Gov’t Code § 552.101. You assert that section 552.023 of the Property Tax Code requires the district to withhold the submitted MLS listing. We note that this statute is correctly cited

Gov’t Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001) (previous determinations).

section 552.023 of the Government Code. Section 552.023 provides a person or person's authorized representative with a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests. Section 552.023(d) requires that the subsequent disclosure of information obtained pursuant to a right of access under section 552.023 be consistent with the authorized purposes for which the consent to release was obtained. *Id.* § 552.023(d). The information at issue was acquired by the district pursuant to a contract and not pursuant to a right of access under section 552.023. Thus, section 552.023 is inapplicable in this instance.

You also raise section 552.101 in conjunction with section 22.27 of the Tax Code, which provides in 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 seek to withhold information obtained from the MLS under section 22.27 of the Tax Code. You state that "[u]nder [section] 22.27 of the Texas Property Tax Code [sic], the information contained in this listing is confidential." 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[.]" *Id.* § 22.27(a). Thus, as you have not demonstrated that information obtained from the MLS falls within the scope of section 22.27(a), the district may not withhold any information obtained from the MLS 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 raise no other exceptions, the submitted information must be released to the requestor.

You also contend, however, that the submitted information is 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 materials that are subject to copyright protection

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). Accordingly, in releasing the submitted information the district must release copyrighted information only in accordance with copyright law.

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,

A handwritten signature in cursive script that reads "L. Joseph James".

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/dh

Ref: ID# 253116

Enc. Submitted documents

c: Ms. Abigail Pendergraft
O'Connor & Associates
2200 North Loop West, Suite 200
Houston, Texas 77018
(w/o enclosures)