



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2006

Mr. Roland R. Bieber, RPA
Chief Appraiser
Jefferson County Appraisal District
P. O. Box 21337
Beaumont, Texas 77720-1337

OR2006-09737

Dear Mr. Bieber:

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# 257466.

The Jefferson County Appraisal District (the "district") received a request for specified property record cards and comparable sales data for a category of properties. You state that the district will release some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You also contend that some of the submitted information is subject to section 552.027 of the Government Code. Further, you indicate that some of the submitted information is the proprietary information of the Beaumont Board of Realtors and the Port Neches-Port Arthur-Nederland Board of Realtors (the "boards"). Pursuant to section 552.305 of the Government Code, you are required to notify the boards of the request and of their 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 Act in certain circumstances). You state that you have notified certain real estate owners of the request. As of the date of this decision, this office has received no correspondence from the real estate owners in question. Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should

or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we address your arguments under section 552.027 of the Government Code. Section 552.027(a) provides that “[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.” *Id.* § 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 argue that the Multiple Listing Services (“MLS”) information, submitted as Exhibit E, is commercially available; however, you also inform us that the district obtained this information pursuant to contracts with the boards. We note that access to a local MLS is generally limited to licensed real estate brokers and appraisers. Where access to information is limited to certain licensed individuals, such information cannot be said to be available “to any member of the public.” Therefore, we are unable to conclude that section 552.027 is applicable to the submitted MLS information. Nevertheless, to the extent that the MLS information is, in fact, available to any member of the public, we agree that such information falls within the scope of section 552.027 and need not be released. To the extent that access to the MLS information is limited to particular individuals, the information is not subject to section 552.027 and must be released unless it falls within an exception to public disclosure. *See Gov’t Code § 552.002.*

Next, section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This exception encompasses information that other statutes make confidential. You 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 state that the information in Exhibit C was obtained voluntarily from property owners after a promise that the information would be held confidential. Based on your representations, we agree that this information is confidential under section 22.27(a) of the Tax Code, and the district must withhold this information under section 552.101 of the Government Code.

You assert, and provide documentation showing, that the MLS information submitted as Exhibit E was obtained through contracts with the boards, and that this information was provided to the district under a promise of confidentiality. 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.* Thus, as you have not demonstrated that information obtained from the boards falls within the scope of section 22.27(a), the district may not withhold any portion Exhibit E under section 552.101 of the Government Code.

You also claim that the information in Exhibit E is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” Gov’t Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. You state that the MLS information obtained from the boards is commercial information excepted under section 552.110. However, you only make a generalized allegation that the release of the information at issue would result in substantial damage to the competitive position of the boards. Further, we have not received any comments from the boards explaining how the release of any of the submitted information will affect their proprietary

interests. Thus, it has not been demonstrated that substantial competitive injury to the boards would likely result from the release of the information at issue. Open Records Decision No. 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). Accordingly, the district may not withhold any of the information in Exhibit E under section 552.110(b) of the Government Code.

In summary, the information in Exhibit C is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code. The district must release the information in Exhibit E.

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,



Tamara L. Harswick
Assistant Attorney General
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TLH/krl

Ref: ID# 257466

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