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

April 9, 2007

Mr. Matthew Tepper
McCreary Veselka Bragg & Allen, P.C.
700 Jeffrey Way, Suite 100
Round Rock, Texas 78664

OR2007-03928

Dear Mr. Tepper:

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# 275263.

The Taylor County Central Appraisal District (the "district"), which you represent, received a request for "all data contained in your commercial comparable sales database." You state you have released some information to the requestor, but 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 requested information is subject to section 552.027 of the Government Code. We have considered your arguments and have reviewed the information you submitted.

Initially, we address your arguments under section 552.027. This section provides in part:

> (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). Thus, section 552.027 excludes commercially available research material from the definition of "public information."

You assert that the district is not required to disclose responsive information that was obtained from Multiple Listing Services ("MLS") because such information is obtained by the district for research purposes and is commercially available. We note, however, 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, however, 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.

Next, we address your claim 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". Gov't Code § 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 some of the submitted information was obtained voluntarily from property owners after a promise that the information would be held confidential. Based on your representations, we agree that responsive information that property owners voluntarily provided to the district in connection with the appraisal of property after a promise of confidentiality is confidential under section 22.27(a) of the Tax Code. To the extent that the submitted records contain such information, it must be withheld from disclosure under section 552.101 of the Government Code.

You also seek to withhold information obtained from the MLS under section 22.27 of the Tax Code. You state that "[h]ere the information was obtained voluntarily from Multiple Listing Services only after a promise that the information would be held confidentially[.]" 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 MLS falls within the scope of section 22.27(a), the district may not withhold any information obtained from the MLS 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).

You also raise section 552.110(b) of the Government Code, which 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 argue that release of information contained in the commercial comparable sales database would cause substantial competitive harm to property owners in negotiating with future renters and buyers. You also assert that the release of MLS information would result in harm to the proprietary interests of MLS. Having considered your arguments, we conclude that you have not demonstrated that any of the remaining information at issue is excepted from disclosure under section 552.110(b). Nor has this office received any arguments against disclosure from MLS or any other interested third party. *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); Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Accordingly, the district may not withhold any of the submitted information under section 552.110(b).

Lastly, we address your statement that some of the submitted information is subject to copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information 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 at 8-9.

In summary: (1) responsive MLS information that is available to any member of the public is subject to section 552.027 of the Government Code and need not be released; and (2) information that property owners voluntarily provided to the district in connection with the appraisal of property after a promise of confidentiality 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 rest of the submitted information. Information that is protected by copyright may only be released in compliance 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,

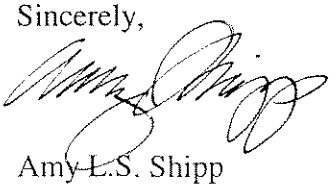
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/eeg

Ref: ID# 275263

Enc. Submitted documents

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

CAUSE NO. D-1-GV-07-000646

Filed In The District Court
of Travis County, Texas
JUN 08 2009 TH
At 1:53 P.M.
Amalia Rodriguez-Mendoza, Clerk

CENTRAL APPRAISAL DISTRICT OF TAYLOR COUNTY, Plaintiff,	§	IN THE DISTRICT COURT OF
V.	§	TRAVIS COUNTY, TEXAS
ATTORNEY GENERAL OF THE STATE OF TEXAS, Defendant.	§	98th JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff Central Appraisal District of Taylor County 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. 2006). 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 this setting and of the parties' agreement that the District may withhold the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of her intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. 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, an electronic copy of all data contained in the District's commercial comparable sales database and a copy of any of the District's sales data with confirmed prices from sales of commercial property since 1-1-2002, 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 8 day of June, 2009

PRESIDING JUDGE

APPROVED:

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