

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

OR2007-03942

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# 275262.

The McClennan County Appraisal District (the "district"), which you represent, received a request for all data contained in the district's commercial comparable sales database. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. Further, you state that some of the submitted information is excepted from disclosure under section 552.110 of the Government Code as the proprietary information of Multiple Listing Services ("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 the exceptions you claim and reviewed the submitted representative sample of information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that the submitted information is confidential under section 22.27 of the Tax Code. This section 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). You state that some of the submitted information was obtained from property owners in connection with the appraisal of their property. You also state that the district assured these property owners that their sales information would be held confidential. Therefore, this information is confidential under section 22.27(a) and must be withheld under section 552.101 of the Government Code. You state that the remaining information was obtained from MLS, private appraisers, and buyers. You argue that section 22.27 protects this information as well. We disagree. In order for the remaining sales information to be made confidential under section 22.27(a), it must have been submitted to the district by the respective property owners. As the remaining information was not obtained from property owners, it is not confidential under section 22.27 and may not be withheld under section 552.101.

You also assert that the remaining information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial 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). This exception to disclosure 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. *Id.* However, the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors), 319 at 3 (1982) (information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Moreover, we believe the public has a strong interest in the release of prices

in government contract awards. See Open Records Decision Nos. 514 (1988) (public has interest in knowing prices charged by government contractors).

You contend that the release of the remaining information would cause substantial competitive harm to MLS and the private appraisers, as well as the property owners to which the information pertains. Specifically, you argue that releasing information, which MLS sells, to members of the public will destroy the market MLS has to sell its product. You also argue that releasing information provided by private appraisers would put those appraisers at a disadvantage because their competitors could use that information to make their own services more valuable. Finally, you contend that releasing the submitted information would put the property owners at a disadvantage when negotiating rental prices and future sales prices. After reviewing your arguments and the submitted information, however, we find that you have made only conclusory allegations that release of the remaining information would result in substantial competitive harm and have not provided a specific factual or evidentiary showing to support this allegation. See Open Records Decision No. 661 (1999) (must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Furthermore, we have not received any comments from MLS explaining how the release of any of the submitted information will affect their proprietary interests. Thus, none of the remaining information may be withheld on the basis of section 552.110(b).

In summary, the information which was obtained from property owners in connection with the appraisal of their property is confidential under section 22.27 of the Tax Code and must be withheld under section 552.101 of the Government Code. The remaining information is not confidential and must be released to the requestor.

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

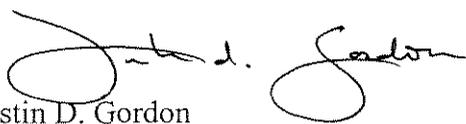
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/sdk

Ref: ID# 275262

Enc. Submitted documents

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

CAUSE NO. D-1-GN-07-001092

McLENNAN COUNTY APPRAISAL DISTRICT,
Plaintiff,

V.

ATTORNEY GENERAL OF THE STATE OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS

TRAVIS COUNTY, TEXAS

53rd JUDICIAL DISTRICT

Filed in The District Court of Travis County, Texas

JUN 08 2009 TH

At 1:53 P.M.
Amelia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff McLennan 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. 2006). The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Abigail 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, 2008

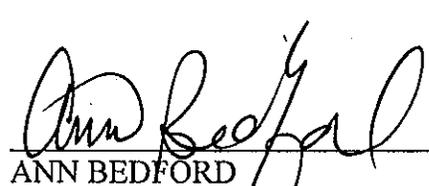


PRESIDING JUDGE

APPROVED:



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