



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2007

Ms. Carol Longoria
The University of Texas System
Office of the General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2007-06499

Dear Ms. Longoria:

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# 279774.

The University of Texas System (the "system") received a request for (1) the name of any person for whom a named individual acted as trustee for the sale of specified property to the system and (2) appraisals reports of that property. You claim that the information in Tab 4 is excepted from disclosure under section 552.101 of the Government Code. You do not take a position as to whether the submitted appraisal reports are excepted under the Act; however, you state, and provide documentation showing, that you notified Robinson, Duffy, & Barnard, L.L.P. and RGV Appraisal Services, LLC of the system's receipt of the request for information and of their rights to submit arguments to this office as to why the requested appraisals should not be released to the requestor. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).* We have considered the exception you claim and reviewed the submitted information.

Section 552.101 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. We understand that the submitted information

pertains to the system's purchase of real property that was held in trust. Section 2252.092 of the Government Code provides in relevant part the following:

A governmental entity may not purchase real property held in trust until the trustee submits to the governing body of the governmental entity a copy of the trust agreement identifying the true owner of the property. The trustee shall identify the true owner of the property to a governmental entity.

Gov't Code § 2252.092(a); *see id.* § 2252.093 (conveyance of property subject to subchapter D of chapter 2252 is void if governmental entity fails to comply with section 2252.092). Section 2252.094 of the Government Code provides that "[a] trust agreement submitted to the governing body of the governmental entity under this subchapter is confidential information excepted from the requirements of Section 552.021, Government Code."

Tab 4 contains a copy of a joint venture agreement to purchase specified real property, and the agreement provides that the property will be held in trust for the benefit of the members of the joint venture. You inform us that this trust agreement was submitted to the system in accordance with section 2252.092 and that it identifies the true owners of the real property held in trust. *See id.* § 2252.092. Based on your representations and our review of the information at issue, we agree that this trust agreement is confidential under section 2252.094 of the Government Code, and the system must withhold it pursuant to section 552.101 of the Government Code.

We next note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Robinson, Duffy, & Barnard, L.L.P. and RGV Appraisal Services, LLC have not submitted to this office any reasons explaining why the submitted appraisal reports should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information, and the system may not withhold the submitted appraisal reports on that basis. *See* Open Records Decision Nos. 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), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

Finally, we note 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).

To conclude, the system must withhold Tab 4 under section 552.101 of the Government Code in conjunction with section 2252.094 of the Government Code. The system must release the remaining information, but any copyrighted information may only be released 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).

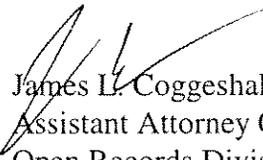
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jb

Ref: ID# 279774

Enc. Submitted documents

c: Mr. Robert Rodriguez
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