



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2007

Ms. Noelle C. Letteri
Legal Services Division
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2007-11968

Dear Ms. Letteri:

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# 292008.

The Texas General Land Office (the "GLO") received two requests for information from the same requestor related to real estate transactions involving the GLO since 2000. You state that the GLO has released a list of real estate transactions and has provided other responsive information to the requestor.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

¹You inform this office that information responsive to the second request was not responsive to the initial request as the "documents were neither complete or considered public" at that time. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we address the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e) a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e).

You state that the GLO received the initial request for information on May 18, 2007 and indicate that the GLO asked the requestor to clarify the request on the same day. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). In Open Records Decision No. 663 (1999), this office determined that during the interval in which a governmental body and a requestor communicate in good faith to narrow or clarify a request, the Act permits a tolling of the statutory ten-business-day deadline imposed by section 552.301. ORD 663 at 5 (ten-day deadline is tolled during process but resumes, upon receipt of clarification or narrowing response, on day that clarification is received). Thus, the ten-business-day time period to request a decision from us under section 552.301(b) was tolled on the date that the GLO sought clarification of the request. *See* Gov't Code § 552.301(b). You state that the GLO received the clarification on June 8, 2007. Accordingly, we conclude that the ten-business-day time period for requesting a decision from our office resumed on June 11, 2007. Thus, the ten-business-day deadline was June 22, 2007, and the fifteen-business-day deadline was June 29, 2007. However, the GLO did not request a ruling from this office or submit written comments and the information at issue until August 10, 2007, well past the statutory deadlines.³ Consequently, we conclude that the GLO failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision from us.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body

³The requestor contends that the GLO delayed its request for a ruling in order to be subject to a more favorable amended version of section 11.086 of the Natural Resources Code that was under consideration by the legislature at the time of his initial request. The GLO provides no information to controvert the requestor's assertion.

must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 can provide a compelling reason to overcome the presumption of openness under section 552.302, we will address your arguments under that exception.

We note that some of the requested information consists of minutes of open meetings of the School Land Board. Section 551.022 of the Open Meetings Act (the "OMA"), chapter 551 of the Government Code, expressly provides that the "minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee." *Id.* § 551.022. Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under chapter 552 of the Government Code. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Thus, the GLO may not withhold the minutes under the claimed exception and must release this information to the requestor. For your convenience, we have marked a representative sample of the minutes that must be released pursuant to the OMA.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. You raise section 11.086(a) of the Natural Resources Code. The Eightieth Legislature amended section 11.086(a) to exempt from public disclosure certain information involving transactions of the School Land Board, the Veteran's Land Board, the GLO, or the commissioner of the GLO. *See* Act of May 17, 2007, 80th Leg., R.S., ch. 381, § 1, 2007 Tex. Sess. Law Serv. 685 (to be codified as an amendment to Nat. Res. Code § 11.086(a) (effective June 15, 2007). Although this amendment to section 11.086(a) was not effective at the time the GLO received the instant request for a ruling, this office will apply the laws that are effective at the time of the issuance of a ruling. *See Houston Indep. Sch. Dist. v. Houston Chronicle Publ'g Co.*, 798 S.W.2d 580 (Tex. App.—Houston [1st Dist.] 1990, writ denied) (absent contrary legislative mandate, newly adopted exception to Act applied to records as of effective date of exception); *see also* Open Records Decision No. 600 (1992). Accordingly, we will apply the amended section 11.086(a) to the submitted information. Section 11.086(a), as amended, provides in relevant part as follows:

Information relating to the development, location, purchase price, or sale price of real property developed, purchased, or sold by or for the School Land Board, Veterans' Land Board, land office, or commissioner under authority granted by this code, including a contract provision related to the development, purchase, or sale of the property, is confidential and exempt from disclosure under [the Act], until all deeds for the property that are applicable to the transaction or series of related transactions are executed and

until all substantive performance or executory requirements of applicable contracts have been satisfied. Information that is confidential and exempted from disclosure under this subsection includes an appraisal, completed report, evaluation, or investigation conducted for the purpose of locating or determining the purchase or sale price of the property, or any report prepared in anticipation of developing, purchasing, or selling real property.

Act of May 21, 2001, 77th Leg., R.S., ch. 1317, § 1, 2001 Tex. Gen. Laws 3233, *amended by* Act of May 17, 2007, 80th Leg., R.S., ch. 381, § 1, 2007 Tex. Sess. Law Serv. 685. You indicate that the remaining submitted information relates to the development, location, purchase price, or sale price of real property developed, purchased, or sold by or for the School Land Board, GLO, or commissioner under authority granted by the Natural Resources Code. You further state that all deeds for the properties at issue have not been executed. Based on your representations and our review, we find that the remaining information is confidential under section 11.086(a) of the Natural Resources Code as amended and must be withheld under section 552.101 of the Government Code.

In summary, we have marked a representative sample of the minutes that must be released pursuant to the OMA. The GLO must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 11.086(a) of the Natural Resources Code as amended.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 292008

Enc. Submitted documents

c: Mr. Jay Root
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(w/o enclosures)