



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2007

Mr. Christopher S. Jackson
Perdue, Brandon, Fielder, Collins, & Mott
3301 Northland Drive, Suite 505
Austin, Texas 78731

OR2007-15998

Dear Mr. Jackson:

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# 296409.

The Grayson Central Appraisal District (the "district"), which you represent, received two requests from the same requestor for information pertaining to its 2006 and 2007 commercial ratio studies and its commercial comparable sales database. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code. You also indicate that the release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, that you notified LoopNet and North Texas Real Estate Information Systems ("North Texas") of the request and their rights to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code § 552.305(d)* (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). North Texas has submitted comments to this office. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decisions 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.

office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. The district received the request for information on September 14, 2007, but did not request a decision from this office until October 1, 2007. The envelope in which the request for a decision was submitted to this office does not have a postmark, and the district has not otherwise established that it sent the submitted documents to this office within the deadlines of section 552.301. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Thus, the district has failed to establish that it complied with the procedural requirements mandated by section 552.301.

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 unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.101 and 552.148 of the Government Code can provide compelling reasons to overcome this presumption; therefore, we will consider whether these sections require the district to withhold the submitted information.

We note that Open Records Letter Ruling 2006-7333 (2006), which you cite, may not be treated as a "previous determination" to support withholding the requested information. What constitutes a previous determination is narrow in scope, and governmental bodies are cautioned against treating most published attorney general decisions as previous determinations to avoid the requirements of section 552.301. The type of previous determination upon which you rely requires that 1) the records or information at issue are precisely the same records or information that were previously submitted to this office; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general, 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001). However, the ruling on which you rely was addressed to a different governmental body and concerned different records and a different set of facts. Consequently, the information at issue may not be withheld on the basis of the previous ruling from our office.

We 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, LoopNet has not submitted to this office any reasons explaining why its information should not be released. Therefore, we

have no basis to conclude that LoopNet has protected proprietary interests in any of the requested information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific, factual evidence that release of the requested information would cause that party substantial competitive harm). Accordingly, we conclude that the district may not withhold any portion of the submitted information based on the proprietary interests of LoopNet.

You claim that the submitted information is excepted from disclosure under section 552.148 of the Government Code. Section 552.148 of the Government Code provides in relevant part that, “[i]nformation relating to real property sales prices, descriptions, characteristics, and other related information received from a private entity by the comptroller or the chief appraiser of an appraisal district under Chapter 6, Tax Code, is excepted from the requirements of Section 552.021.” *See Gov’t Code* § 552.148. The legislative history of section 552.148 indicates it was enacted as a result of the issuance of several open records rulings of this office in which we ruled that information provided by Multiple Listing Services to appraisal districts under confidentiality agreements is subject to required public disclosure under the Act. HOUSE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. Comm. Substitute H.B. 2188, 80th Leg., R.S. (2007); *see, e.g.*, Open Records Letter Nos. 2006-07161 (2006), 2006-04628 (2006). Because of these rulings, many multiple listing services stopped providing sales information to appraisal districts. The bill analysis of House Bill 2188 states that the purpose of section 552.148 is to allow the relationships between a multiple listing service and appraisal districts to continue. HOUSE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. Comm. Substitute H.B. 2188, 80th Leg., R.S. (2007). Here, you state that the submitted information consists of information relating to real property sales prices, descriptions, and characteristics obtained from LoopNet and North Texas. You do not inform us, nor does it appear, that the district is authorized to release this information to the requestor. *See Gov’t Code* § 552.148(b) (providing property owner or owner’s agent access to certain sales data for specified purpose). Based on the your representations, we conclude that the district must withhold this information under section 552.148 of the Government Code.²

Lastly, the district asks whether section 552.148 makes the information confidential or whether the district has the discretion to release the information. We conclude that based on the plain language of the statute and when read as a whole, section 552.148 makes the information confidential and the district may not voluntarily release the information except as provided by section 552.148(b).

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

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

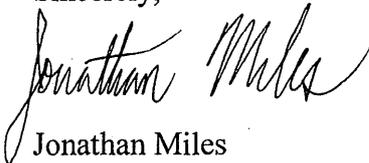
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 296409

Enc. Submitted documents

- c: Ms. Abbigail Pendergraft
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- c: Mr. Jerome L. Prager
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