



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2007

Mr. James R. Evans
Hargrove & Evans, LLP
4425 MoPac Expressway South
Building 3, Suite 400
Austin, Texas 78735

OR2007-16008

Dear Mr. Evans:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 296269.

The Lavaca County Appraisal District (the "district"), which you represent, received a request for a copy of any sales data with confirmed prices from sales of commercial property since January 1, 2006, and all data contained in the 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. We have considered your claimed exceptions and reviewed the submitted representative sample of information.¹

Initially, we must address the district's responsibilities under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *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

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 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.

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. Gov't Code § 552.301(e). The district timely requested a ruling and asserted its claim under section 552.148. The district failed, however, to timely assert its section 552.101 claim or submit its arguments under that exception within the time periods prescribed by section 552.301. Generally, the failure of a governmental body to comply with the procedural requirements of the Act results in the waiver of its claimed exceptions. *See generally* Gov't Code § 552.302 (stating that failure to comply with Gov't Code § 552.301 generally results in information being deemed public). Because section 552.101 is a mandatory exception, it cannot be waived by the district's procedural violation. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ) (concluding that only applicability of compelling reasons can overcome procedural defect); Open Records Decision No. 665 at 2 n.5 (2000) (addressing significant distinction between mandatory and discretionary exceptions to disclosure). Accordingly, we will address both of the district's claimed exceptions to disclosure.

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.” Gov't Code § 552.148(a). 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, the district states the submitted information consists of information relating to real property sales prices, descriptions, and characteristics obtained from private entities. The district does 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 owners agent access to certain sales data for specified purpose). Based on the district's representations, we conclude to the extent the requested information was obtained from a multiple listing service or other similar entity, the information is confidential under section 552.148. To the extent the requested information was not obtained from such an entity, the information is not confidential under section 552.148 of the Government Code.

You also argue that some of the requested information is confidential under section 22.27(a) of the Tax Code. 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 exception encompasses information protected by other statutes. Section 22.27(a) of the Tax Code provides the following:

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). The district states that some of the information was obtained from property owners in connection with the appraisal of their properties, and that the district promised the property owners confidentiality. Based on this representation and our review, we agree that to the extent the requested information was obtained from property owners under a promise of confidentiality and in connection with the appraisal of their properties, the information is confidential under section 22.27(a) and must be withheld under section 552.101 of the Government Code.

In summary, to the extent the requested information was obtained from a multiple listing service or other similar entity, the information is confidential under section 552.148. To the extent the requested information was obtained from property owners under a promise of confidentiality and in connection with the appraisal of their properties, the information is confidential under section 22.27(a). To the extent that neither section 552.148 nor section 22.27 applies, the information must be released.

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 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).

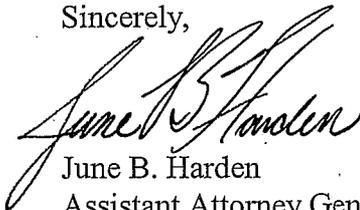
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



June B. Harden
Assistant Attorney General
Open Records Division

JBH/sdk