



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2007

Mr. Joseph T. Longoria
Perdue, Brandon, Fielder, Collins, & Mott, L.L.P.
1235 North Loop West, Suite 600
Houston, Texas 77008

OR2007-16379

Dear Mr. 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 #297067.

The El Paso Central Appraisal District (the "district"), which you represent, received two requests from the same requestor for (1) copies of the district's 2006 and 2007 commercial ratio studies, including all supporting data used to create each study and (2) any sales data with confirmed prices from sales of commercial property since January 1, 2006. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we address the district's representation that some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2004-7888 (2004). In Open Records Letter No. 2004-7888, we ruled upon the availability of data that was used by the district to determine the 2004 market values for commercial property for which protests had been filed. The information at issue in 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 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.

request pertains, in part, to the price of commercial property since January 1, 2006, as well as the district's 2006 and 2007 commercial ratio studies. Thus, we find that the information at issue in the district's request for this ruling is not the same as that on which the previous ruling is based. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). Therefore, the district may not rely on Open Records Letter No. 2004-7888 in disposing of any of the requested information. Accordingly, we will consider your arguments with regard to the public availability of all of the requested 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." Gov't Code § 552.101. This section 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). You state that the requested information was obtained "from sales disclosures, income/expense information, settlement statements and closing documents" provided by property owners and private entities under a promise of confidentiality and in connection with the appraisal process. Based on this representation and our review, we agree that the information provided by property owners is confidential under section 22.27(a) and must be withheld under section 552.101 of the Government Code. However, any information provided by entities other than property owners may not be withheld on this basis.

Section 552.148 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. You state that the remaining information at issue consists of real property sales information obtained from realtors, private appraisers, and other private entities. The legislative history

of section 552.148 indicates that 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 multiple listing services and appraisal districts to continue. HOUSE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. Comm. Substitute H.B. 2188, 80th Leg., R.S. (2007). Accordingly, for information obtained from realtors and private appraisers, we find the information is confidential under section 552.148. For information obtained from other private entities, we find that, to the extent the information was obtained from a multiple listing service or other similar entity, the information is confidential under section 552.148. To the extent the information was not obtained from such an entity, the remaining information at issue is not confidential under section 552.148 of the Government Code and may not be withheld on that basis.

In summary, the requested sales information that was obtained from property owners under promises of confidentiality and in connection with the appraisal process is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code. The requested real property sales information that was obtained from realtors, private appraisers, multiple listing services or other similar entities is confidential under section 552.148 of the Government Code. Any remaining 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 297067

Enc. Submitted documents

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