



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 1, 2008

Mr. James G. Nolan
Assistant General Counsel
Texas Comptroller of Public Accounts
P. O. Box 13528
Austin, Texas 78711

OR2008-04247

Dear Mr. Nolan:

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# 306202.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for information related to the annual property value studies conducted in six named Independent School Districts. You state that you are releasing some information to the requestor. You claim that the responsive Multiple Listing Services ("MLS") printouts are excepted from disclosure under sections 552.101 and 552.148 of the Government Code. You also inform us that release of these printouts could implicate the proprietary interests of a third party. You state, and provide documentation showing, that you notified North Texas Real Estate Information Systems, Inc. ("NTREIS") of the request and of its opportunity to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *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 the applicability of exception to disclose under Act in certain circumstances). We have received comments from a representative of NTREIS. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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.

Initially, you acknowledge, and we agree, that the comptroller failed to submit the information required by section 552.301(e) within fifteen business days of its receipt of the written request for information. *See* Gov't Code § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the 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 id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). In this instance, third party interests and sections 552.101 and 552.148 of the Government Code can provide compelling reasons to overcome this presumption. Therefore, we will consider whether your exceptions to disclosure or third party interests require the comptroller to withhold the submitted information.

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). You state that the information at issue consists of MLS data received by the comptroller from a private entity, NTREIS. You state further that section 552.148(c) does not apply in this instance because the requestor's appraisal district has not filed any protests under section 403.303 of the Government Code regarding the MLS data at issue. *See id.* § 552.148(c) (providing for release of data by the comptroller to appraisal districts in connection with protests filed under section 403.303 of the Government Code). Therefore, based on your representations and our review, we find that the comptroller must withhold the requested MLS data under section 552.148 of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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# 306202

Enc. Submitted documents

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