



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 24, 2008

Mr. James G. Nolan  
Open Records Section  
Texas Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2008-05474

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# 308164.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for information related to the Annual Property Value Study pertaining to Sadler-Southmayd, Pottsboro, and Sherman Independent School Districts. You state that you have released a portion of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code. You also state that releasing the requested information may implicate the interests of a third party. Accordingly, you have notified the interested third party, North Texas Real Estate Information Systems, Inc. ("North Texas"), of the request and of its opportunity to submit comments to this office. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 allows a governmental body to rely on an interested third party to raise and explain the applicability of the exception to disclosure in certain circumstances). We have received arguments from North Texas. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We 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 note, and you acknowledge, that the comptroller failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b) (governmental body must ask for decision from this office and state exceptions that apply within ten business days of receiving written request for information). 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 id.* § 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 and the interests of North Texas can provide compelling reasons to overcome this presumption; therefore, we will consider whether the submitted information is excepted under the Act.

You claim section 552.101 of the Government Code for the submitted information. Section 552.101 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 403.304 of the Government Code provides:

(a) All information the comptroller obtains from a person, other than a government or governmental subdivision or agency, under an assurance that the information will be kept confidential, in the course of conducting a study of school district values is confidential and may not be disclosed except as provided in Subsection (b).

(b) Information made confidential by this section may be disclosed:

- (1) in a judicial or administrative proceeding pursuant to a lawful subpoena;
- (2) to the person who gave the information to the comptroller; or
- (3) for statistical purposes if in a form that does not identify specific property or a specific property owner.

*Id.* § 403.304. You inform us that the information at issue consists of Multiple Listing Services ("MLS") data obtained from North Texas, a non-governmental entity. You state that the information was obtained in the course of conducting the comptroller's Annual Property Value Survey, a study required under section 403.302 of the Government Code that evaluates school district property values. *See id.* § 403.302. Further, you inform us that the information was obtained under an assurance that the information will be kept confidential by the comptroller. You also state that none of the exceptions to confidentiality set forth in subsection 403.304(b) apply in this instance. Based on your representations and our review,

we agree that the submitted information is confidential under section 552.101 in conjunction with section 403.304(a) of the Government Code.

You also claim section 552.148 of the Government Code for 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). As noted above, the information at issue consists of MLS data received by the comptroller from a private entity, North Texas. You state that section 552.148(c) does not apply in this instance because the 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 requested MLS data is confidential under section 552.148 of the Government Code. Accordingly, the comptroller must withhold the submitted information under section 552.101 in conjunction with section 403.304 of the Government Code and section 552.148 of the Government Code.<sup>2</sup>

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

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jh

Ref: ID# 308164

Enc. Submitted documents

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