



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2008

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

OR2008-06425

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# 309753.

The Texas Comptroller of Public Accounts (the "comptroller") received ten requests from the same requestor for information related to the Annual Property Value Study pertaining to ten independent school districts. 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 proprietary interests of a third party. Accordingly, you have notified North Texas Real Estate Information Systems ("NTREIS"), 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 NTREIS. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section

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.

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 is Multiple Listing Service (“MLS”) data consisting of real estate sales and valuation information obtained by NTREIS from MetroTex Association of Realtors, 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 403.304(a) of the Government Code.

You also raise section 552.148 of the Government Code, which provides in relevant part, “[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 submitted information consists of MLS information obtained from a private entity. Based on your representations and our review of the information at issue, we find that the information is excepted from disclosure under section 552.148(a) of the Government Code.

However, subsection (c) of section 552.148 provides in relevant part that:

[n]otwithstanding Subsection (a) or Section 403.304, Government Code, so as to assist a property owner, a school district, or an appraisal district in a

protest filed under Section 403.303, Government Code, the property owner, the district, or an agent of the property owner or district may, on request, obtain from the comptroller any information, including confidential information, obtained by the comptroller in connection with the comptroller's finding that is being protested.

Gov't Code § 552.148(c). In this case, you state that while the requestor is a representative of the Grayson Central Appraisal District ("GCAD"), neither the requestor nor GCAD "has filed a protest [under section 403.303] as to the [school districts] that are the subjects of the instant requests." Therefore, section 552.148(c) is inapplicable to the submitted information at this time. Consequently, the comptroller must withhold the information under section 552.148(a) of the Government Code and under section 552.101 in conjunction with section 403.304(a) of the Government Code.

You also ask this office to issue a previous determination permitting the comptroller to withhold "MLS data obtained by [the comptroller] in furtherance of the Annual Property Value Study from a private entity pursuant to an agreement providing an assurance of confidentiality" under sections 552.101 and 552.148 without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 309753

Enc. Submitted documents

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