



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2008

Mr. Phong P. Phan  
General Counsel  
Travis Central Appraisal District  
P.O. Box 149012  
Austin, Texas 78714-9012

OR2008-07628

Dear Mr. Phan:

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# 311867.

The Travis Central Appraisal District (the "district") received a request for any information used in tax year 2007 to value single family accounts as well as any information used to make adjustments while valuing these accounts.<sup>1</sup> You state that the district has released the information in Exhibit C. You claim that under section 552.027 of the Government Code, the Act does not require the district to grant the requestor access to the information in Exhibit E. You claim that the information in Exhibit D 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 information.

Initially, we note that the district was untimely in its request for an attorney general decision. 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. Gov't Code § 552.301(a), (b). Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open 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

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<sup>1</sup>You inform us that the district sought and received clarification of the information requested. See Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); see also Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

to which parts of the documents. *Id.* § 552.301(e). In this instance, the district received the request for information on March 3, 2008. However, you did not request a ruling or submit the requested information for our review until March 31, 2008. You inform us that the district entered into an agreement with the requestor to allow the district additional time, until March 31, 2008, to request a decision regarding the requestor's open records request. We note, however, that the deadlines prescribed by section 552.301 are fixed by statute and cannot be altered by agreement. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990), 514 at 1-2 (1988). Consequently, we find that the district failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with 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. Gov't Code § 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 for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Sections 552.101 and 552.148 of the Government Code can provide compelling reasons sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .352. Therefore, we will address your arguments under these exceptions.

Section 552.027 of the Government Code provides as follows:

- (a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.
- (b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.
- (c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

*Id.* § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. The legislative history of this provision notes that section 552.027 should exclude from the definition of public information

books and other materials that are also available as research tools elsewhere to any member of the public. Thus, although public library books are available for public use, the library staff will not be required to do research or make copies of books for members of the public.

INTERIM REPORT TO THE 74TH LEGISLATURE OF THE HOUSE STATE AFFAIRS COMM., 74th Leg., R.S., SUBCOMMITTEE ON OPEN RECORDS REVISIONS 9 (1994).

You state that the information in Exhibit E consists of publications the district purchased for research purposes and as a resource guide in the valuation process mandated by the Property Tax Code. You state that the publications are commercially available to the public and access to them is not merely limited to only individuals in the property tax arena or certain licensed individuals. You state that the requestor is free to obtain the publications directly from the publishing companies. You also indicate that the publications are not made part of, incorporated into, or referred to in a rule or policy of the district. Based on your representations, we find the district has established that the information at issue is "information in a commercial book or publication purchased or acquired by the governmental body for research purposes . . . [and is] commercially available to the public." Gov't Code § 552.027(a). Accordingly, the information in Exhibit E need not be released.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes. Section 22.27 of the Tax Code provides the following:

(a) 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 portions of the sales information in Exhibit D, "[were] obtained by the [d]istrict from owner sales letters, sales disclosures, income/expense information, settlement statements and closing documents provided by property owners, their agents/representatives or other private entities," but that, "not all sales information was obtained under a promise by the [d]istrict to keep this information confidential." To the

extent that the district obtained the sales information in Exhibit D from property owners or their agents under a promise of confidentiality, that information is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code.

Section 552.148 of the Government Code 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 portions of the sales information in Exhibit D were obtained from a multiple listing service. 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, 80<sup>th</sup> Leg., R.S. (2007). 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. *Id.* Based on your representations and our review of the information at issue, we find that the sales information in Exhibit D obtained from a multiple listing service is excepted from disclosure under section 552.148(a) of the Government Code.

In summary, Exhibit E is subject to section 552.027 of the Government Code, and need not be released. To the extent that the district obtained the sales information in Exhibit D from property owners or their agents under a promise of confidentiality, that information is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code. To the extent the sales information in Exhibit D was obtained from a multiple listing service, it is excepted from disclosure under section 552.148(a) of the Government Code. The remaining submitted 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,

Benjamin A. Diener  
Assistant Attorney General  
Open Records Division

BAD/jb

Ref: ID# 311867

Enc. Submitted documents

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

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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,

A handwritten signature in black ink, appearing to be the initials 'B' followed by a flourish, enclosed in a circle.

Benjamin A. Diener  
Assistant Attorney General  
Open Records Division

BAD/jb

Ref: ID# 311867

Enc. Submitted documents

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