



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2008

Mr. Kirk Swinney
McCreary, Veselka, Bragg & Allen
700 Jeffrey Way, Suite 100
Round Rock, Texas 78665

OR2008-08124

Dear Mr. Swinney:

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# 312819.

The Midland Central Appraisal District (the "district"), which you represent, received a request for all data contained in the district's commercial and residential sales database pertaining to sales of commercial and residential properties from January 1, 2006 through December 31, 2006. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.110, and 552.148 of the Government Code. In addition, you assert that release of some of this information may implicate the proprietary interests of third parties. Pursuant to section 552.305 of the Government Code you were required to notify the interested third parties of the request and of their opportunity to submit comments to this office explaining why their information should be withheld from disclosure. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 applicability of exception to disclosure

in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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. You contend that part of the requested information is confidential under section 22.27 of the Tax Code. This section states in pertinent part:

(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 "the appraisal district has not identified any sales requested that were not derived from the Multiple Listing Service. In the event that any such sales were identified, it is also nearly certain that they were acquired under a promise of confidentiality to the owner pursuant to the referenced §22.27 or through a confidential rendition." Based on your representations and our review of the submitted information, we find that you have failed to demonstrate that any of the requested information was provided to the district by property owners under an agreement of confidentiality. Accordingly, the district may not withhold any of the requested information under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code.

You also assert that the information at issue is excepted under section 552.148 of the Government Code. 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

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.

§ 552.148. You state that the requested information consists of sales data obtained from Multiple Listing Services, realtors, and private appraisers. 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). 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). The district does not inform us, nor does it appear, that the district is authorized to release this information to the requestor. *See* Gov't Code § 552.148(b) (providing property owner or owner's agent access to certain sales data for specified purpose). Based on the district's representations, we conclude to the extent the information was obtained from a multiple listing service, realtor, or private appraiser, the information is confidential under section 552.148. To the extent the information was not obtained from such an entity, the information is not confidential under section 552.148 of the Government Code and may not be withheld on that basis. Accordingly, we will determine whether the information obtained from an entity other than a realtor, private appraiser, or multiple listing service is proprietary information.

Section 552.305 of the Government Code permits an interested third party to submit to this office within ten days of receiving notification of the request reasons why requested information should not be released. *See* Gov't Code § 552.305; *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 applicability of exception in Act in certain circumstances). We have not received comments from any affected entity. However, on behalf of these entities you assert that their information is excepted under section 552.110 of the Government Code. Section 552.110(b) of the Government Code protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*

You contend that the release of the information at issue would cause substantial competitive harm to the entities from whom it was obtained. After reviewing your arguments and the submitted information, however, we find that you have made only conclusory allegations that release of the information obtained from entities other than realtors, private appraisers, or multiple listing services would result in substantial competitive harm and have not provided a specific factual or evidentiary showing to support this allegation. *See* Open Records Decision No. 661 (1999) (must show by specific factual evidence that substantial competitive

injury would result from release of particular information at issue). Thus, none of the requested information may be withheld on the basis of section 552.110(b).

In summary, to the extent the requested information was obtained from realtors, private appraisers, or multiple listing services, it must be withheld under section 552.148 of the Government Code. To the extent the requested information was not obtained from realtors, private appraisers, or multiple listing services, it 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).

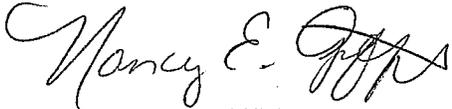
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in cursive script, appearing to read "Nancy E. Griffiths".

Nancy E. Griffiths
Assistant Attorney General
Open Records Division

NEG/jb

Ref: ID# 312819

Enc. Submitted documents

c: Mr. D. Alexander Stone
O'Connor and Associates, L.P.
2200 North Loop West, Suite 200
Houston, Texas 77018
(w/o enclosures)