



The Attorney General of Texas

JIM MATTOX
Attorney General

May 30, 1984

Supreme Court Building
P. O. Box 12548
Austin, TX. 78711-2548
512/475-2501
Telex 910/874-1367
Telecopier 512/475-0266

714 Jackson, Suite 700
Dallas, TX. 75202-4506
214/742-8944

4824 Alberta Ave., Suite 160
El Paso, TX. 79905-2793
915/533-3484

1001 Texas, Suite 700
Houston, TX. 77002-3111
713/223-5886

806 Broadway, Suite 312
Lubbock, TX. 79401-3479
806/747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501-1685
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205-2797
512/225-4191

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Mr. Ron Patterson
Executive Director
State Property Tax Board
P. O. Box 15900
Austin, Texas 78761

Open Records Decision No. 414

Re: Whether confidential information obtained pursuant to section 11.87 of the Education Code is also confidential for purposes of section 5.10 of the Tax Code

Dear Mr. Patterson:

You have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether records of your agency which were used in apportioning the unit value of utilities between the Smith County Appraisal District and other appraisal districts are excepted from required public disclosure. Citing the confidentiality provisions of section 11.87 of the Education Code, you assert that the requested information falls within the ambit of section 3(a)(1) of the Open Records Act which exempts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." We agree. We conclude that such information is excepted from disclosure.

The State Property Tax Board is required by section 11.86 of the Education Code to conduct a biennial study to determine the taxable market value of all property within each school district. Section 11.86 reads, in pertinent part:

(a) The board shall conduct a biennial study using comparable sales and other generally accepted techniques to determine the total taxable market value and index value of all taxable property in each school district. . . . In conducting the studies, the board shall use appropriate standard valuation, statistical compilation, and analysis techniques to compute the total market value and productivity value

(b) The study shall determine the values as of January 1 of each odd-numbered year.

(c) The board shall publish preliminary findings, listing values by district, before September 1 of each even-numbered year and on that date it shall certify its findings to the commissioner of education.

The results of the study are used by the commissioner of education in determining local fund assignments under the foundation school program. See Educ. Code ch. 16, §16.001 et seq.

Section 11.87 of the Education Code provides that certain information obtained in the course of the school valuation study pursuant to confidentiality agreements may not be disclosed to the public except in certain specified instances. Section 11.87 of the Education Code states the following:

(a) All information the board 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) of this section.

(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 board; or

(3) for statistical purposes if in a form that does not identify specific property or a specific property owner. (Emphasis added).

In addition to conducting the school district valuation study required by section 11.86 of the Education Code, the board is also required to conduct and publish a biennial ratio study of the weighted average level of appraisals within each appraisal district. Section 5.10 of the Tax Code sets forth the following in pertinent part:

(a) The board shall conduct a biennial study in each appraisal district to determine for each odd-numbered year the degree of uniformity of and the weighted average level of appraisals by the appraisal district within each major kind of

property. The board shall publish the findings of the study before the end of the even-numbered year following the year for which the study is conducted. In conducting the study, the board shall use appropriate standard statistical analysis techniques to compute measures of central tendency and average dispersion.

See Tax Code §1.12 (definition of "weighted average level of appraisal"). You inform us that the board, in furtherance of its duty to conduct the two studies, pursues what is essentially a single data collection effort. In other words,

[t]he same information obtained and used to develop school district market and index values is used to generate findings of the weighted average level of appraisals within each appraisal district.

Governmental bodies are prohibited from entering into agreements to keep information confidential except where specifically authorized by statute. Open Records Decision Nos. 283 (1981); 207 (1978); 133 (1976). In this instance, the board is so authorized. There is no question that information obtained in the course of the school district valuation study pursuant to section 11.87 of the Education Code is confidential and excepted from required public disclosure by section 3(a)(1) of this act. See Open Records Decision No. 344 (1982). The real issue is whether such information retains its confidential character when it is used by the board for purposes other than the school district valuation study. We conclude that it does.

This office has repeatedly held that information may be transferred between governmental agencies without thereby destroying its confidential character. Open Records Decision Nos. 388 (1983); 272 (1981); 183 (1978); Attorney General Opinions H-917, H-836 (1976). Implicit in such a transfer is the notion that the agency in receipt of the information will use it for purposes different from those of the collecting agency. Analogously, we conclude that information used for a specific purpose obtained pursuant to a specifically-authorized confidentiality agreement remains confidential in the hands of the collecting agency even when such information is used for other purposes. Section 11.87 of the Education Code does not limit the scope of the confidentiality agreement to information obtained only in an instance in which such information is used for the school district valuation study; it reaches "[a]ll information . . . obtained . . . in the course of conducting a study of school district values" In other words, the language "in the course of . . ." refers to the circumstances under which such information is obtained, not to the circumstances under which it is used. The scope of the

confidentiality provision reaches all information obtained under certain circumstances, i.e. all information which is first, given with the assurance that it will remain confidential and second, collected in the course of conducting the school district valuation study. If the board employs the confidential information in conducting another required study, it is not thereby disclosing such information to the public. Once information is obtained pursuant to a confidentiality agreement executed by the board in the course of conducting the school district valuation study, that information is confidential regardless of any other lawful purposes to which the information is used by the board. It can be disclosed to the public only in those instances set forth in subsection (b) of section 11.87.

Accordingly, we conclude that information obtained pursuant to a confidentiality agreement by the board in the course of conducting the school district valuation study as authorized by section 11.87 of the Education Code remains confidential, even when the board uses such information to conduct a ratio study of appraisal districts as required by section 5.10 of the Tax Code.

Very truly yours,

JIM MATTOX
Attorney General of Texas

TOM GREEN
First Assistant Attorney General

DAVID R. RICHARDS
Executive Assistant Attorney General

Prepared by Jim Moellinger
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Rick Gilpin, Chairman
Susan Garrison
Jim Moellinger
Nancy Sutton