



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1994

Mr. William J. Roberts
Gay & McCall, Inc.
777 East 15th Street
Plano, Texas 75074

OR94-837

Dear Mr. Roberts:

As counsel for the Collin County Central Appraisal District (the "appraisal district"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28437.

The appraisal district received a request to copy its database back-up tapes. The requestor would like to use his own equipment to do so. You assert that the appraisal district must deny this request because portions of the tapes are excepted from required public disclosure under sections 552.101 and 552.110 of the Government Code. As an alternative to permitting the requestor to copy its back-up tapes, the appraisal district has offered to provide the requestor a computer tape of the certified tax rolls.

Since the property and privacy rights of five third parties are implicated by the release of the requested information here, this office notified those parties of this request. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that former V.T.C.S. art. 6252-17a, § 7(c), predecessor provision of Gov't Code § 552.305, permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances).

The third parties have made numerous arguments to support the appraisal district's contention that it cannot permit the copying of the back-up tape. In summary, the software companies make the following arguments: that their license agreements with the appraisal district prohibit the unauthorized disclosure of their software; that the

information is excepted from required public disclosure under section 552.101 of the Government Code as information made confidential by copyright law; that the information is excepted from required public disclosure under section 552.104 of the Government Code; that the information is excepted from required public disclosure under section 552.110 of the Government Code as a trade secret; and that the software is not public information subject to the Open Records Act.

Another third party, the Greater Dallas Association of Realtors ("GDAR"), informs us that the tape also contains some GDAR-prepared compilations of information about property-specific sales prices, dates of sale, and details and conditions of financing of closed sales of properties which were listed for sale on GDAR's Greater Metro Multiple Listing Service (the "MLS"). GDAR asserts that this information is confidential pursuant to section 22.27(a) of the Tax Code and therefore excepted from required public disclosure under sections 552.101 and 552.110 of the Government Code. GDAR also maintains that because the MLS compilations are copyrighted, the information from the MLS is excepted from required public disclosure under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure information made confidential by law, including statutory law. You inform us that among other things, the tapes contain information from rendition statements, in particular, "individual property owners rendered values of property owned by them." You assert that such information is confidential under section 22.27(a) of the Tax Code, which states as follows:

(a) Rendition statements, real and personal property reports, and 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. (Emphasis added).

Section 22.27(a) makes confidential not only the rendition statements, but also prohibits the disclosure of "the information they contain about specific real or personal property or a specific real or personal property owner" to anyone other than an appraisal office employee, unless one of the exceptions in subsection (b) of section 22.27 applies.

Subsection (b) contains the following exception for information made confidential under subsection (a):

(6) if and to the extent the information is required to be included in a public document or record that the appraisal office is required to prepare or maintain.

Under subsection (b), if the information from rendition statements is information that is "required to be included in a public document or record that the appraisal office is required to prepare or maintain," such information is not subject to the confidentiality of section 22.27(a). *See* Open Records Decision No. 347 (1982) at 3. Therefore, not all information from a rendition statement is rendered confidential by subsection (a); information from a rendition statement that is required to be in a public document, such as appraisal records, must be disclosed. *See id.*

The chief appraiser of all appraisal district offices appraising property for purposes of ad valorem taxation is required to maintain appraisal records of all property the office is required to appraise. *See* Tax Code § 25.01; 34 T.A.C. § 9.3004(a). These appraisal records must be in a form prescribed by the comptroller and must contain certain information, including the name and address of the owner, a description of the property being appraised, and the appraised value of the property. *See* Tax Code § 25.02; 34 T.A.C. § 9.3004(b). However, the individual property owners' rendered values of property owned by them is apparently not required to be in the appraisal records the chief appraiser must prepare and maintain as public records. *See id.*¹ Therefore, we conclude that section 22.27(b) of the Tax Code does not apply. Consequently, such information is confidential under section 22.27(a) of the Tax Code.

Having established that the back-up tape contains at least some confidential information, we do not think it is necessary to consider your claims or those of the third parties that the tape contains other confidential or nondisclosable information in order to determine whether the appraisal district may permit the requestor to copy the back-up tape using his own equipment. A procedure for providing access to public information is not permissible if such procedure does not protect confidential information from improper disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Attorney General Opinion JM-672 (1987) at 6. The Open Records Act does not grant members of the public a right to copy

¹We note that when an appraisal district contracts with a private appraisal firm to perform appraisal services for the district, the appraisals and supporting data, which the firm must make available to the appraisal district, are public records. *See* Tax Code § 25.01(c). We have not been provided with sufficient information to determine whether the individual property owners' rendered values are part of the supporting data used by a private appraisal firm to perform appraisal services for the appraisal district. In any case, we are not aware of a requirement that the supporting data include the property owners' rendered values.

public records, with their own copying equipment, when such copying would give the requestor access to confidential information. Attorney General Opinion JM-757 (1987) at 4. Since the procedure for providing access to public information in this case--permitting the requestor to copy the appraisal district's back-up tape--would give the requestor access to confidential information, we conclude that such a procedure is impermissible.²

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
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KHG/rho

Ref.: ID# 28437

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²As several third parties have informed us that the back-up tapes contain copyrighted information, we note that a governmental body is not required to make copies of copyrighted information. Attorney General Opinion MW-307 (1981). Members of the public who make copies of such information assume the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See id.*; Open Records Decision No. 550 (1990).

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