



March 27, 2002

Ms. Judith A. Hargrove
Linebarger Goggan Blair Peña & Sampson, L.L.P.
P.O. Box 17428
Austin, Texas 78760

OR2002-1521

Dear Ms. Hargrove:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#160490.

The Travis Central Appraisal District (the "district"), which you represent, received a request for certain ground leases pertaining to a specific parcel of real property. You claim that the submitted information, which you deem responsive to the request, is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the arguments submitted to this office by the requestor. See Gov't Code § 552.304.

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

(b) Information made confidential by this section may be disclosed:

...

(2) to the person who filed the statement or report or the owner of property subject to the statement, report, or information or to a representative of either authorized in writing to receive the information;

....

Tax Code § 22.27(a), (b) (emphasis added). You state that the owners of the property in question provided information regarding the terms of certain ground leases on the property, that the information was specifically provided to the district in connection with the appraisal of the property, and that it was provided with the understanding that it would be kept confidential by the district. You state that the submitted information is "income and expense information" regarding the property, and that it is not contained in any document filed of record. On this basis and upon review of the submitted documents, we agree that the information is confidential under section 22.27(a) of the Tax Code unless one of the exceptions in section 22.27(b) is applicable.

The requestor argues to this office that the requestor, Texas Protax Austin, Inc. ("TPA"), has a right of access to the submitted information under section 22.27(b)(2) as the agent of the effective owner of the property. The requestor relies on section 41.413, subsections (b) and (c), of the Tax Code, which provide:

(b) A person leasing real property who is contractually obligated to reimburse the property owner for taxes imposed on the property is entitled to protest before the appraisal review board a determination of the appraised value of the property if the property owner does not file a protest relating to the property. The protest provided by this subsection is limited to a single protest by either the property owner or the lessee.

(c) A person bringing a protest under this section *is considered the owner of the property for purposes of the protest*. The appraisal review board shall deliver a copy of any notice relating to the protest and of the order

determining the protest to the owner of the property and the person bringing the protest.

Tax Code § 41.413 (b), (c) (emphasis added). The requestor argues that because the lessee of the property, which the requestor represents, is obligated to reimburse the owner of the property a portion of the property taxes for the parcel at issue, the lessee is in fact the "owner" of the property under section 41.413(b) and (c). Therefore, according to the requestor, the lessee has the same rights as the property owner, and thus, as the lessee's agent, TPA has a right of access to the submitted information under section 22.27(b)(2) of the Tax Code. We disagree. Section 41.413(c) provides only that a lessee who is contractually obligated to reimburse a property owner for property taxes has the rights of the owner of property solely for the purpose of protesting the appraised value of the property. We are not persuaded that this provision makes such a lessee the "owner" of the property for purposes of being granted a right of access to information under section 22.27(b) of the Tax Code. Therefore, we find that the information at issue is confidential under section 22.27(a) of the Tax Code and must be withheld from disclosure under section 552.101 of the Government Code.

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 appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 160490

Enc. Submitted documents

c: Mr. David Bawcom
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(w/o enclosures)