



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2008

Ms. Sandra Griffin
Perdue, Brandon, Fielder, Collins & Mott, L.P.
3301 Northland Drive, Suite 505
Austin, Texas 78731

OR2008-10705

Dear Ms. Griffin:

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# 316608.

The Menard County Appraisal District (the "district"), which you represent, received two requests from the same requestor for all landowner income and expense surveys pertaining to crop years 2001 through 2006, and other information used to determine agricultural productivity values for purposes of property tax calculation. You state you have provided some of the requested information to the requestor. You claim that the requested landowner income and expense surveys are excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor and a property owner. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹ We 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.

Section 552.101 of the Government Code exempts 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, such as section 22.27 of the Tax Code, which 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 the requested 2001 through 2006 landowner surveys contain income and expense information about specific real properties that was obtained in connection with their appraisals. You also state the income and expense information was filed with the district without an explicit promise from the district that the information would be held confidential. You argue, however, that the language of section 22.27(a) is written such that the requirement of a promise of confidentiality applies only to information voluntarily disclosed about sales prices. You therefore argue that although the requested information was not disclosed under a promise of confidentiality, the information is nonetheless confidential under section 22.27(a) because it is income and expense information and not voluntarily disclosed sales price information. After considering your arguments and reviewing the statutory language, we agree that the promise of confidentiality requirement in section 22.27(a) pertains only to voluntarily disclosed sales price information. Accordingly, based on your arguments and our review of the requested information, we find that the requested 2001 through 2006 landowner income and expense surveys are confidential under section 22.27(a) of the Tax Code.

We note, however, that the requestor asserts a right of access to the requested surveys pursuant to section 25.195 of the Tax Code, which provides in relevant part:

(a) After the chief appraiser has submitted the appraisal records to the appraisal review board as provided by Section 25.22(a), a property owner or the owner's designated agent is entitled to inspect and copy the appraisal

records relating to property of the property owner, together with supporting data, schedules, and, except as provided by Subsection (b), any other material or information held by the chief appraiser or required by Section 25.01(c) to be provided to the appraisal district under a contract for appraisal services, including material or information obtained under Section 22.27, that is obtained or used in making appraisals for the appraisal records relating to that property.

(b) The owner of property other than vacant land or real property used for residential purposes or the owner's agent may not inspect any material or information obtained under Section 22.27.

Tax Code § 25.195(a)-(b). Prior decisions of this office have held that section 25.195 gives property owners a right of access to all information used to appraise the owners' properties, including information pertaining to properties of other owners. *See* Open Records Decision Nos. 550 (1990) (property owner has right of access to all appraisal records relating to owner's property), 500 (1988). In Attorney General Opinion JC-0424, however, this office examined the relationship between sections 25.195 and 22.27 of the Tax Code. *See* Attorney General Opinion JC-0424 (2001). In that opinion, we noted the 1997 legislative amendments to section 25.195 "include[d] the express reference to section 22.27 in subsection (a) of section 25.195 and [added] subsection (b)." *Id.* at 3; *see* Act of June 1, 1997, 75th Leg., R.S., ch. 1039, § 25, 1997 Tex. Gen. Laws 3897, 3910. We found that the "effect of [those] amendments appears to have been to limit the right of access to information filed by others and made confidential under section 22.27 to owners of vacant land and residential real property, thus precluding owners of [other types of property] from obtaining such information." Attorney General Opinion JC-0424 at 3 (2001).

In comments submitted to this office, the requestor states he is an owner of agricultural real property and has requested the information at issue with the intent of receiving the information used by the district to determine his agricultural property appraisal for tax year 2007. The district argues that although agricultural land appears to be vacant, the terms "vacant land" and "agricultural land" are not synonymous in the property valuation process. The Office of the Comptroller of Public Accounts, which oversees the property valuation process, defines "vacant land" and "agricultural land" as two distinct types of real property. "Vacant land" is generally small tracts of land that "may be idle tracts in some stage of development or awaiting construction, tracts planned for residential structures, recreational lots or commercial and industrial building sites." *Real Property: Vacant Lots and Tracts*, PROP. CLASSIFICATION GUIDE REP. PROP. VALUE (Tex. Comptroller Pub. Acct., Austin, Tex.), May 2007, at 3. "Agricultural land" is "[a]ll acreage qualified for productivity valuation." *Real Property: Qualified Agricultural Land*, PROP. CLASSIFICATION GUIDE REP. PROP. VALUE (Tex. Comptroller Pub. Acct., Austin, Tex.), May 2007, at 4. Thus, because the requestor's land is not vacant land or residential real property, we find that the requestor does not have a right of access pursuant to section 25.195 of the Tax Code. Accordingly, the

district must withhold the requested income and expense landowner surveys under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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). If the governmental body does not file suit over 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).

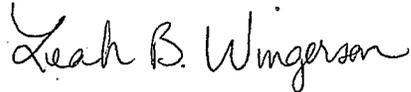
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 316608

Enc. Submitted documents

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