



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2008

Mr. Matthew Tepper
McCreary, Veselka, Bragg, & Allen, P.C.
700 Jeffrey Way, Suite 100
Round Rock, Texas 78665

OR2008-14608

Dear Mr. Tepper:

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# 325905.

The Central Appraisal District of Taylor County (the "district"), which you represent, received a request for tax and sales data pertaining to a specified property account number. You state you have released some information to the requestor. You claim that the requested property sales information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code. 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 some of the requested information is confidential under section 22.27 of the Tax Code. This section states in pertinent part:

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.

(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 some of the requested information consists of confirmed sales data voluntarily disclosed to the district by property owners under a promise of confidentiality. You indicate that none of the permissible disclosures in subsection (b) of section 22.27 apply in this instance. Based on your representations and our review, we find that section 22.27 is applicable to any voluntarily disclosed sales price information obtained from property owners under a promise of confidentiality.

You assert that the remaining information at issue is subject to 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 § 552.148. You state that the remaining requested information consists of sales data obtained from Multiple Listing Services and similar private entities. Based on your representations and our review, we find that the remaining information is subject to section 552.148. However, subsection (b) of section 552.148 reads as follows:

Notwithstanding Subsection (a), the property owner or the owner’s agent may, on request, obtain from the chief appraiser of the applicable appraisal district a copy of each item of information described by Section 41.461(a)(2), Tax Code, and a copy of each item of information that the chief appraiser took into consideration but does not plan to introduce at the hearing on the protest. In addition, the property owner or agent may, on request, obtain from the chief appraiser comparable sales data from a reasonable number of sales that is relevant to any matter to be determined by the appraisal review board at the hearing on the property owner’s protest. Information obtained under this subsection:

- (1) remains confidential in the possession of the property owner or agent; and
- (2) may not be disclosed or used for any purpose except as evidence or argument at the hearing on the protest.

Id. § 552.148(b). You acknowledge that a property owner or the owner's designated agent has a right of access to certain information that is confidential under section 22.27 of the Tax Code and section 552.148(a) of the Government Code. In this instance, the requestor asserts a right of access to the requested information under section 41.461 of the Tax Code. Section 41.461 provides in relevant part:

- (a) At least 14 days before a hearing on a protest, the chief appraiser shall:
 - (2) inform the property owner that the owner or the agent of the owner may inspect and may obtain a copy of the data, schedules, formulas, and all other information the chief appraiser plans to introduce at the hearing to establish any matter at issue[.]

Tax Code § 41.461(a)(2). The requestor is a property tax consultant who states he is the designated agent of the property owner at issue. Section 1.111 of the Tax Code governs a property owner's authority to designate an agent to act on the owner's behalf in property tax matters. *See* Tax Code § 1.111(a)-(i); *see also* Op. Tex. Att'y Gen. No. GA-0559 (2008). Under section 1.111(b), a designation of agent: (1) "must be made by written authorization signed by the owner, a property manager authorized to designate agents for the owner, or other person authorized to act on behalf of the owner," and (2) "must clearly indicate that the person is authorized to act on behalf of the property owner in property tax matters relating to the property or the property owner." Tax Code § 1.111(b). Furthermore, the comptroller has developed the following requirements for designating an agent:

- (a) Except as provided by subsection (m) of this section, a property owner shall use comptroller form 50-162-1 to designate an agent for property tax matters. For the purposes of this section, the term "property owner" includes a person who claims a legal interest in the property.

...

- (c) The appointment of an agent under subsection (a) of this section is not binding on an appraisal district until the designation form is filed with the district. The property owner shall indicate the date the owner appoints the agent on the designation form. If the property owner files forms designating more than one agent to act in the same capacity for the same item of property,

the form bearing the later date of appointment revokes the form bearing the earlier date, as of the date the form bearing the later date is filed[.]

34 T.A.C. § 9.3044(a), (c). Thus, only upon submission of the proper form may a property owner designate another person to act as that owner's agent with regard to property tax matters. In this instance, you state that the submitted "Appointment of Agent" form is improper because it is not signed by the property owner. Although you ask this office to rule on the validity of this form, this office does not have the legal authority to make such a determination. *See generally* Gov't Code § 552.011 (providing that this office shall maintain uniformity in the interpretation of the Act). Thus, only an appraisal district receiving an appointment of agent form can make a determination as to whether the form complies with the comptroller's requirements. As you have made the determination that the submitted appointment of agent form is improper because it is not signed by the property owner, the requested information must be withheld under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code and section 552.148 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. *Id.* § 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/ma

Ref: ID# 325905

Enc. Submitted documents

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