



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2009

Mr. Sands L. Stiefer
Chief Deputy & General Counsel
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-9075

OR2009-02577

Dear Mr. Stiefer:

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# 335988.

The Harris County Appraisal District (the "district") received two requests from the same requestor for the district's 2008 single family and commercial real estate ratio studies, including the underlying data used in the creation of the studies. You claim that the requested 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 information.

You indicate that a portion of the submitted information was the subject of two previous requests for information, in response to which this office issued Open Records Letter Nos. 2009-00531 (2009) and 2009-01054 (2009). With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in the prior rulings, we conclude that, as we have no indication that the law, facts, or circumstances on which the prior rulings were based have changed, the district must continue to rely upon Open Records Letter Nos. 2009-00531 and 2009-01054 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (determining governmental body may rely on previous determination when records or information at issue are precisely same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); governmental body which received request for records or information is same governmental body that previously requested and received ruling from attorney general; prior ruling concluded that precise records or information are or are not excepted from disclosure under Act; and law, facts, and circumstances on which prior ruling was based have not changed

since issuance of the ruling). To the extent that the submitted information is not encompassed by the previous rulings, we will address the submitted arguments.

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 portions of Exhibit C are confidential under section 22.27 of the Tax Code. This section 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:

...

(5) for statistical purposes if in a form that does not identify specific property or a specific property owner[.]

Tax Code § 22.27(a), (b)(5). We understand that the district is an "appraisal office" for purposes of section 22.27. You state that Exhibit C contains "sales information voluntarily provided to the [district] by third parties" under a promise of confidentiality. You seek to withhold only the owner's name and account number in Exhibit C, which you have highlighted in green, under section 22.27(a). You indicate the remaining information in Exhibit C will be released pursuant to section 22.27(b)(5). You state none of the remaining permissible disclosures in section 22.27(b) apply to the highlighted information. Based on your representations and our review, we find that, to the extent the information you have highlighted in green was obtained from property owners under promises of confidentiality,

that information is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code.

You also assert that the information contained in Exhibit B, with the exception of the data listed in the column labeled "HCAD Val," is excepted under 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 Exhibit B consists of sales data obtained from a private entity. Based on your representations and our review, we find that the information obtained from a private entity is generally confidential under section 552.148(a).

However, 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 552.148(a) of the Government Code. Subsection (b) of section 552.148 provides the following:

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). Thus, a property owner or the owner's designated agent has a right of access to certain information that is confidential under section 552.148(a). The requestor states, and you acknowledge, he is the "property tax agent for multiple Harris County property owners." The requestor also states, in his second request, that "this information is being requested under section 552.148[,] which provides the owner or owner's agent the right to obtain information considered by the [district] which it does or does not plan to provide at the hearing." However, you assert that section 552.148(b) is inapplicable to Exhibit B because the "individual sales prices or ratios in a ratio study sample are not

relevant in administrative hearings” and “are not considered in any respect in preparation for a hearing.”

Whether the information in Exhibit B is subject to section 552.148(b) is a question of fact. *Id.* § 552.148(b). This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Accordingly, we must accept the district’s representation that section 552.148(b) is inapplicable to Exhibit B. Therefore, Exhibit B, with the exception of the data listed in the column labeled “HCAD Val,” must be withheld pursuant to section 552.148(a) of the Government Code.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office in Open Records Letter Nos. 2009-00531 and 2009-01054, the district must continue to rely upon those rulings as previous determinations and withhold or release the identical information in accordance with them. To the extent the information you have highlighted in green in Exhibit C was obtained from property owners under promises of confidentiality, that information is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code. With the exception of the data listed in the column labeled “HCAD Val,” the district must withhold Exhibit B pursuant to section 552.148(a) of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 335988

Enc. Submitted documents

c: Requestor
(w/o enclosures)