



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 9, 2009

Mr. James R. Evans, Jr.  
Hargrove & Evans, L.L.P.  
4425 MoPac South  
Building 3, Suite 400  
Austin, Texas 78735

OR2009-12716

Dear Mr. Evans:

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# 354654.

The Caldwell County Appraisal District (the "district"), which you represent, received a request for information regarding all commercial property sales within Lockhart and Caldwell County during a specified period of time. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.148 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments received from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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. Section 22.27 of the Tax Code provides the following:

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<sup>1</sup>Although you claim the information is excepted under section 552.148 of the Government Code, we note the 81<sup>st</sup> Texas Legislature renumbered section 552.148 to section 552.149 of the Government Code. Act of May 12, 2009, 81st Leg., R.S., ch. 87, § 27.001(39), 2009 Tex. Sess. Law Serv. 208, 376 (Vernon).

(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 argue the submitted information is confidential under section 22.27(a). We understand the district is an appraisal office for purposes of section 22.27. You state Exhibit B consists of information concerning real property that was provided to the district by property owners. You also state the district routinely promises confidentiality to property owners providing information to the district in connection with the appraisal of the property. Upon review, we agree the information in Exhibit B consists of statements and reports about specific real property that were voluntarily disclosed to the district by the personal property owners after a promise of confidentiality. Further, none of the exceptions to confidentiality provided by section 22.27(b) apply. Thus, we find the information in Exhibit B is confidential under section 22.27 of the Tax Code, and must be withheld under section 552.101 of the Government Code. You also seek to withhold the information in Exhibit C, which you state was obtained from the Multiple Listing Service through brokers and real estate persons, under section 22.27 of the Tax Code. We note, however, that section 22.27(a) protects "information the owner of property provides to the appraisal office in connection with the appraisal of the property[.]" *Id.* You do not inform us any of the information in Exhibit C was provided to the district by the owners of the properties at issue in connection with the appraisal of the properties. Thus, as you have not demonstrated the information obtained from the Multiple Listing Service falls within the scope of section 22.27(a), the district may not withhold any information in Exhibit C under section 552.101 of the Government Code on that basis. *Cf.* Open Records Decision No. 550 at 7 (1990) (Tax Code § 22.27 not applicable to information compiled by private market research firm and provided to appraisal district).

Section 552.149 of the Government Code provides, in relevant part:

(a) Information 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 [the Act].

(b) 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.

Gov't Code § 552.149(a)-(b). The 81st Texas Legislature amended section 552.149 to limit the applicability of section 552.149(a) to those counties having a population of 20,000 or more. See Act of May 29, 2009, 81st Leg., R.S., ch. 555, § 1 2009 Tex. Sess. Law Serv. 1259, 1260 (to be codified at Gov't Code § 552.149(d)) and Act of June 3, 2009, 81st Leg., R.S., H.B. 2941, § 1 (to be codified at Gov't Code § 552.149(e)). We note that Caldwell County has a population of 20,000 or more.

The legislative history of the statutory predecessor to section 552.149 indicates it was enacted as a result of the issuance of several open records rulings of this office in which we ruled information provided by Multiple Listing Services to appraisal districts under confidentiality agreements is subject to required public disclosure under the Act. HOUSE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. Comm. Substitute H.B. 2188, 80th Leg., R.S. (2007). Because of these rulings, many multiple listing services stopped providing sales information to appraisal districts. The bill analysis of House Bill 2188 states the purpose of this statute is to allow the relationships between multiple listing services and appraisal districts to continue. HOUSE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. Comm. Substitute H.B. 2188, 80th Leg., R.S. (2007). You state that Exhibit C consists of sales information obtained from a private entity pertaining to commercial property. Therefore, we find the information in Exhibit C is generally confidential under section 552.149(a).

However, pursuant to section 552.149(b), a property owner or the owner's designated agent has a right of access to certain information that is confidential under section 552.149(a). The requestor states, and you acknowledge, he is the owner of a commercial property and is protesting the valuation of his property by the district. Thus, the requestor argues that section 552.149(b) gives him a right of access to the requested information. However, you state the request seeks "all commercial sales occurring during a two year period, regardless of whether the chief appraiser took those sales into consideration in connection with the requestor's protest, or whether they are comparable to the subject of the protest or otherwise relevant to the protest." Thus, you assert such information is not subject to required disclosure under section 552.149(b). As stated above, subsection (b) provides a property owner a right of access to information described by section 41.461(a)(2) of the Tax Code, information the chief appraiser took into consideration during the appraisal, and comparable sales data from a reasonable number of sales that is relevant to the matter to be determined by the appraisal board. We note information made public by statute may not be withheld

from disclosure pursuant to exceptions in the Act, such as section 552.103 of the Government Code. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, to the extent the information in Exhibit C is subject to required disclosure under section 552.149(b) of the Government Code, the district must release it to the requestor. To the extent the information in Exhibit C is not subject to section 552.149(b), it must be withheld under section 552.149(a) of the Government Code.

Finally, you raise section 25.195 of the Tax Code. Section 25.195(a) of the Tax Code provides:

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.

Tax Code § 25.195(a). Section 25.195(a) grants a property owner a specific right of access to appraisal records relating to the property of the property owner and supporting data, schedules, and other information obtained or used in making appraisals for the appraisal records relating to that property. As noted above, the requestor is the property owner. To the extent the remaining information contains information considered by the chief appraiser and comparable sales data related to the appraisal, such information is subject to section 25.195(a), and the requestor has a right of access to this information. Accordingly, it may not be withheld. As noted above, information made public by statute may not be withheld from disclosure pursuant to exceptions in the Act. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976).

Section 25.195(a) also provides, except as provided by subsection (b), a property owner's designated agent has a right of access to information subject to section 22.27. Thus, section 25.195(a) is limited by section 25.195(b), which prohibits an owner of a non-residential property from accessing information the district obtained under section 22.27. Here, the requestor owns non-residential commercial property. Further, the district obtained the information in Exhibit B under section 22.27. Thus, section 25.195 of the Tax Code does not provide the requestor a right of access to the information in Exhibit B.

In summary, the information in Exhibit B must be withheld under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code. To the extent information in Exhibit C is subject to required disclosure under section 552.149(b), it must be released to the requestor. To the extent the information in Exhibit C is not subject to

required disclosure under section 552.149(b), it must be withheld pursuant to section 552.149(a) of the Government Code.

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](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,

A handwritten signature in black ink, appearing to read 'KES', with a large, stylized flourish extending to the right.

Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/jb

Ref: ID# 354654

Enc. Submitted documents

c: Requestor  
(w/o enclosures)