



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2009

Mr. Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2009-13920

Dear Mr. Smith:

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# 357183.

The Dallas Central Appraisal District (the "district") received a request for copies of audit reports submitted to the district by American Housing Foundation (the "foundation") from 2003-2008. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.116, and 552.149 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of the requested information.²

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

¹Although you claim the information is excepted under section 552.148 of the Government Code, we note the 81st 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.

²We 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.

Code § 552.101. This section encompasses information protected by other statutes. You contend that the requested information is 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.

Tax Code § 22.27(a). You generally assert that the submitted information is confidential under section 22.27 of the Tax Code. However, we note the submitted information consists of audit reports submitted to the district for the purpose of receiving a tax exemption. In order to receive a tax exemption, the foundation was statutorily required to submit the audit reports to the district. *See id.* § 11.182(g). Thus, we find the district has failed to demonstrate that the submitted information falls within the scope of section 22.27(a). Accordingly, the district may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code.

Next, you raise section 552.116 of the Government Code for the submitted information, which provides:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state that the submitted information consists of audit working papers. We note the submitted information pertains to audits of a private entity. You provide no arguments demonstrating that these audits were authorized or required by a method specified in section 552.116(b)(1). *See id.* § 552.116(b)(1). Thus, we conclude that the district has failed to establish that section 552.116 is applicable to any portion of the submitted information, and no portion of the information may be withheld on this basis.

Section 552.149 of the Government Code 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 § 552.149(a). The Texas Legislature has recently 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., S.B. 1813, § 1 (to be codified at Tex. Gov't Code § 552.149(d)); Act of June 3, 2009, 81st. Leg., R.S., H.B. 2941, § 1 (to be codified at Tex. Gov't Code § 552.149(e)). We note that Dallas County has a population of 20,000 or more. You indicate the requested information consists of information received by the chief appraiser of an appraisal district under chapter six of the Tax Code. However, we note the submitted information consists of audit information obtained from a property owner. The legislative history of section 552.149 indicates that it was enacted as a result of the issuance of several open records rulings of this office in which we determined that information provided by Multiple Listing Services to appraisal districts under confidentiality agreements is subject to required public disclosure under the Act. *See* 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 that the purpose of section 552.149 is to allow the relationships between multiple listing services and appraisal districts to continue. *Id.* Accordingly, we find that a property owner is not a private entity as intended by the legislature when enacting section 552.149. Therefore, the district may not withhold the submitted information under section 552.149 of the Government Code. As you raise no further exceptions to disclosure, the submitted 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, toll free, at (888) 672-6787.

Sincerely,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 357183

Enc. Submitted documents

cc: Requestor
(w/o enclosures)