



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2010

Mr. Christopher B. Gilbert
Thompson & Horton LLP
711 Louisiana Street, Suite 2100
Houston, Texas 77002-2746

OR2010-00064

Dear Mr. Gilbert:

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# 366106.

The Houston Independent School District (the "district"), which you represent, received a request for nine categories of information pertaining to the methodology used by the Harris County Appraisal District ("HCAD") in determining the taxable value of real property for the 2008 and 2009 tax years. You claim the requested information is excepted from disclosure under sections 552.110, 552.116, and 552.149 of the Government Code.¹ You also state that release of this information may implicate the proprietary interests of a third party, Integra Realty Resources, Inc. ("Integra"). You inform us that pursuant to section 552.305 of the Government Code, the district notified Integra of the request and of the company's right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments

¹Although you initially raised section 552.103 of the Government Code, we note that, in communications with our office, you have withdrawn this exception. Additionally, we note you also initially raised section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you also have withdrawn this exception. *See* Gov't Code §§ 552.301, 552.302.

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.

submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, Integra has not submitted comments to this office explaining why any portion of the submitted information should not be released to the requestor. Therefore, we have no basis to conclude that Integra has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Although the district also raises section 552.110 of the Government Code for Integra's information, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district's argument under section 552.110 for the submitted information. Accordingly, the district may not withhold any portion of the submitted information on the basis of any proprietary interests that Integra may have in this information. We will, however, address the district's remaining arguments to withhold portions of the submitted information.

Next, we note that Exhibit H consists of a completed report made for the district, which is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). Although you raise section 552.116 of the Government Code for Exhibit H, section 552.116 is a discretionary exception to disclosure that protect the governmental body's interests and may be waived. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.116 is not other law that makes information confidential for purposes of section 552.022. Consequently, the district may not withhold Exhibit H under section 552.116 of the Government Code. As you raise no further exceptions to disclosure for Exhibit H, the district must release Exhibit H to the requestor. Next, we will address your claim under section 552.149 for the remaining submitted information.

You claim the remaining submitted information is excepted from disclosure under section 552.149 of the Government Code. Section 552.149 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].

(d) Notwithstanding Subsection (a), or Section 403.304, so as to assist a school district in the preparation of a protest filed or to be filed under Section 403.303, the school district or an agent of the school district may, on request, obtain from the comptroller or the appraisal district any information, including confidential information, obtained by the comptroller or the appraisal district that relates to the appraisal of property involved in the comptroller's finding that is being protested. Confidential information obtained by a school district or an agent of the school district under this subsection:

- (1) remains confidential in the possession of the school district or agent; and
- (2) may not be disclosed to a person who is not authorized to receive or inspect the information.

Gov't Code § 552.149(a), (d). The 81st Texas Legislature amended section 552.149 to limit the applicability of sections 552.149(a) and (d) to those counties having a population of 20,000 or more. *See id.* § 552.149(e). We note that Harris County has a population of 20,000 or more.

You state the information in Exhibits D, E, F, and G was obtained by the district from either the comptroller or HCAD. *See id.* § 552.149(d). You also indicate that a protest has been filed pursuant to section 403.304 of the Government Code. *See id.* However, you do not indicate whether the information consists of sales information originally obtained from multiple listing services or similar private entities or if the information was originally obtained from property owners. 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). Accordingly, we find that a property owner is not a private entity as intended by the legislature when enacting section 552.149. Because realtors and private appraisers provide information to multiple listing services, any submitted real property sales information that the district obtained from either the comptroller or HCAD pursuant to section 552.149(d) and that was originally obtained from realtors and private appraisers is confidential under section 552.149(a) of the Government Code. We also find that any submitted real property sales information, which the district obtained from either the comptroller or HCAD pursuant to section 552.149(d), that was originally obtained from multiple listing services or other similar entity also remains confidential under section 552.149(a) of the Government Code. To the extent that any submitted information, which the district obtained from either the comptroller or HCAD pursuant to section 552.149(d), that was not originally obtained from such an entity, it is not

confidential under section 552.149(a) of the Government Code and must be released to the requestor.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/dls

Ref: ID# 366106

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)