



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2010

Mr. Michael B. Gary
Assistant General Counsel
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR2010-10239

Dear Mr. Gary:

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# 386137 (HCAD Internal Reference No. 10-0846).

The Harris County Appraisal District (the "district") received a request for several categories of information related to commercial real property and vacant land sales in Harris County from January 1, 2008 to the present.¹ You claim that Exhibits 2 and 3 are excepted from disclosure under sections 552.101 and 552.149 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹We note the district received clarification from the requestor regarding this request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request).

²We assume that the "representative sample" of information 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.

The requestor argues that the district has indicated it may possess responsive documents that contain both confidential and non-confidential information. The requestor further contends that, if such documents exist, they must be released with the confidential information excised. The district has submitted responsive documents to this office and has claimed exceptions to disclosure for this information. Therefore, we will rule on this information. Should any other responsive information exist, as the district has not submitted such information to this office nor raised exceptions for it, we assume it has been released to the requestor. If such information has not been released, then it must be released at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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].

(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. 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.

Gov't Code § 552.149(a), (b). The 81st Texas Legislature amended section 552.149 to limit the applicability of sections 552.149(a) and (b) 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. 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 the submitted information relates to real property sales and was provided to the district by private entities. You further state that the requestor has not represented that he is an owner of any property at issue or that he is the agent of such an owner. Based on this representation, we find that Exhibits 2 and 3 are confidential and must be withheld under section 552.149(a) of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 386137

Enc. Submitted documents

c: Requestor
(w/o enclosures)