



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2010

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

OR2010-12082

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# 389784.

The Cameron County Appraisal District (the "district"), which you represent, received a request for the information described in section 41.461(a)(2) of the Texas Tax Code pertaining to the requestor's property tax hearing; each item of information the Chief Appraiser took into consideration, but does not plan to introduce at the requestor's 2010 property tax valuation protest hearing; and all confidential sales data reported to the district for the La Feria, Harlingen, and San Benito Independent School Districts for 2009 and 2010 for single family residences in the 78552 Zip Code, to include sales data for those homes sold in foreclosure. You state that you have released some of the requested information. You state you do not possess some of the requested information.¹ You claim that the submitted information is 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 considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

¹In responding to a request for information under the Act, a governmental body is not required to disclose information that did not exist at the time the request was received. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990).

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.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 22.27 of the Tax Code, which 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 argue Exhibits B-1 and C-1 are confidential under section 22.27(a). We understand the district is an appraisal office for purposes of section 22.27. You state Exhibits B-1 and C-1 consist of information concerning real property that was provided to the district by property owners or the property owner's agents. 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 Exhibits B-1 and C-1 consists of statements and reports about specific real property that were voluntarily disclosed to the district by the personal property owners or their agents 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 Exhibits B-1 and C-1 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 Exhibits B-2 and C-2, which you state was obtained from the Multiple Listing Service, 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 Exhibits B-2 and C-2 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 Exhibits B-2 and C-2 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 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 Cameron 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 Exhibits B-2 and C-2 consist of sales information obtained from a private entity pertaining to real property. Therefore, we find the information in Exhibits B-2 and C-2 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 a property owner 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 confidential single-family sales data in three school districts in one entire zip code without regard for whether the requested number is reasonable" and that "[s]ection 552.149(b) only requires the District to furnish a reasonable number of sales on request, but that section does not require the District to produce *all* items of a particular category of information even if all items are relevant to the protest, if the requested number is unreasonable." (emphasis in original) 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

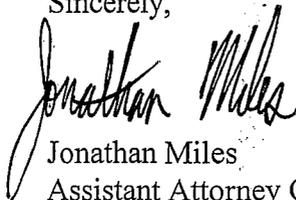
chief appraiser took into consideration during the appraisal, and comparable sales data from a reasonable number of sales that is relevant to the matter to be determined by the appraisal board. Accordingly, to the extent the information in Exhibits B-2 and C-2 is subject to required disclosure under section 552.149(b) of the Government Code, the district must release it to the requestor. To the extent the information in Exhibits B-2 and C-2 is not subject to section 552.149(b), it must be withheld under section 552.149(a) of the Government Code.

In summary, the information in Exhibits B-1 and C-1 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 Exhibits B-2 and C-2 is subject to required disclosure under section 552.149(b), it must be released to the requestor. To the extent the information in Exhibits B-2 and C-2 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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 389784

Enc. Submitted documents

c: Requestor
(w/o enclosures)