



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2010

Ms. Judith A. Hargrove
Hargrove & Evans, LLP
4425 MoPac South
Building 3, Suite 400
Austin, Texas 78735

OR2010-13537

Dear Ms. Hargrove:

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# 392891.

The Victoria County Appraisal District (the "district"), which you represent, received a request for all records, documentation, mathematical formulas, and evidence used to generate the 2010 appraisal of six specified addresses, including the requestor's address. You state some of the responsive information has been provided to the requestor. You claim 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.¹

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, such as section 22.27 of the Tax Code, which states in pertinent part:

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

(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 A consists of or contains information concerning real property that was provided to the district by property owners. You indicate the district obtained the information in Exhibit A from property owners under a promise of confidentiality pursuant to section 22.27(a). Based on your representations, we find the information in Exhibit A consists of sales surveys about real property that were voluntarily disclosed to the district by the property owners after a promise of confidentiality. Further, it does not appear the exceptions to confidentiality provided by section 22.27(b) apply. Thus, we find the information in Exhibit A is confidential under section 22.27(a) 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 and C under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. You state Exhibit B contains information obtained from the local Multiple Listing Service ("MLS") under a promise the information not be disclosed to the public. You also state Exhibit C consists of a sales report that contains information obtained from property owners and the local MLS under a promise of confidentiality. We note section 22.27(a) protects only "information the owner of property provides to the appraisal office in connection with the appraisal of the property[.]" *Id.* Because you inform us the information in Exhibit B was provided to the district by the local MLS and not the owners of the properties at issue, we find the district may not withhold any portion of Exhibit B under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. As noted above, you state the information in Exhibit C was obtained from both the property owners at issue under a promise of confidentiality and the local MLS. Thus, we find the district must withhold the information in Exhibit C that was voluntarily disclosed to the district by the property owners at issue after a promise of confidentiality under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. However, the information in Exhibit C

that was provided to the district by the local MLS is not confidential under section 22.27(a) of the Tax Code and may not be withheld under section 552.101 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).

Next, you claim section 552.149 of the Government Code for the remaining information. 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.

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 id.* § 552.149(e). We note Victoria 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 the MLS 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 MLS agencies 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 the MLS 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 Exhibit B and the remaining information in Exhibit C consist of or contain real property sales information obtained from the local MLS. We note 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) of the Government Code. *See* Gov't Code § 552.149(b). However, we have no indication a protest has been filed regarding the requestor's property. Therefore, we find the information in Exhibit B and the remaining information in Exhibit C must be withheld under section 552.149(a).

In summary, the district must withhold: (1) the information in Exhibit A, and the information in Exhibit C that was voluntarily disclosed to the district by the property owners after a promise of confidentiality, under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code; and (2) the information in Exhibit B and the remaining information in Exhibit C under 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tp

Ref: ID# 392891

Enc. Submitted documents

c: Requestor
(w/o enclosures)