



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 14, 2010

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

OR2010-15668

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# 397148.

The Victoria County Appraisal District (the "district"), which you represent, received a request for all documents used to substantiate the sales prices of specified comparable properties. 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.<sup>1</sup>

Initially, you inform us that Exhibit C is not responsive to the instant request for information because it was not specifically requested by the requestor. The district need not release non-responsive information in response to this request, and this ruling will not address that information.

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

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<sup>1</sup>We 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.

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:

(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 Exhibit B 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. 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.

Next, you claim section 552.149 of the Government Code for Exhibit B. 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 consists of or contains 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 must be withheld under section 552.149(a).

In summary, the district must withhold the information in Exhibit A under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. The district must also withhold the information in Exhibit B 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](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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/em

Ref: ID# 397148

Enc. Submitted documents

c: Requestor  
(w/o enclosures)