



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2010

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

OR2010-18457

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# 402359 (HCAD Reference No.10-0728).

The Harris County Appraisal District (the "district") received a request for certain evidence presented at appraisal review board hearings for several specified properties. You claim the requested 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 information.¹ We have also considered comments submitted by interested third parties and a representative of 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 the requestor specifically excludes "all operating statements, rent rolls, and other financial information submitted to the [appraisal review board] by a [property] owner or [o]wner's [a]gent." Thus, such information is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release that information in response to the request.

Next, we address the requestor's representative's (the "representative") contentions the district and Harris County Appraisal Review Board (the "ARB") failed to comply with

¹We 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.

section 552.301 of the Government Code. 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. . Section 552.301(b) provides that a governmental body must ask for the attorney general's decision and claim its exceptions to disclosure no later than the tenth business day after the date of its receipt of the written request for information. *See Gov't Code* § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

The representative argues the ARB is an “independent governmental body that owns the requested records [and] has not submitted a request to the Attorney General [pursuant to section 552.301], and therefore, the information is presumed to be subject to disclosure[.]” We note, however, the requestor's initial request and subsequently modified request are addressed to the Open Records Administrator of the district, not the ARB. Therefore, because the request was not sent to the ARB, we conclude the ARB was not required to seek a ruling from our office and therefore, did not fail to comply with the requirements of section 552.301 of the Government Code.

Next, the representative argues the district did not comply with its obligations under section 552.301. The district informs us it received the instant request for information on September 13, 2010. The district also informs us it sought a clarification of the request on September 21 and received the requestor's clarified response on September 24. *See Gov't Code* § 552.222 (b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). As we have no indication that the district acted in bad faith in seeking clarification in this instance, we consider the district's ten-business-day period for requesting a decision under section 552.301(b) to have begun on September 24, 2010, the date of the district's receipt of the requestor's response to the request for clarification. *See City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Thus, the district's ten-business-day deadline was October 8, 2010, and its fifteen-business-day deadline was October 15, 2010. We note the district's submissions to

this office were postmarked within the ten- and fifteen-business-day deadlines. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we find the district complied with section 552.301 of the Government Code.

Section 552.101 of the Government Code excepts 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 indicate, and the documents reflect, that some of the responsive information was furnished to the district by property owners in connection with the appraisal of property and under a promise of confidentiality. Thus, to the extent the responsive information was furnished to the district by property owners in connection with the appraisal of property and under a promise of confidentiality, we find that the information is confidential under section 22.27(a) of the Tax Code, and must be withheld under section 552.101 of the Government Code. However, to the extent the information was not furnished by property owners in connection with the appraisal of property and under a promise of confidentiality, the information is not confidential under section 22.27(a) of the Tax Code and may not be withheld under section 552.101 of the Government Code on that basis.

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. 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 indicate, and the documents reflect, some of the submitted information relates to real property sales and was provided to the district by private entities. Thus, to the extent the responsive information relates to real property sales and was provided to the district by private entities, it must be withheld under section 552.149(a) of the Government Code. However, to the extent the responsive information does not relate to real property sales or was not provided to the district by private entities, it may not be withheld under section 552.149 of the Government Code.

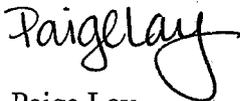
Lastly, we understand the requestor and the representative to assert the information at issue must be released because it was previously presented at ARB protest hearings. The Act does not permit the selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that same information may not subsequently be withheld from the public, unless its public disclosure is expressly prohibited

by law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). However, section 22.27(b)(4) of the Tax Code provides that information made confidential by section 22.27 may be disclosed "in a judicial or administrative proceeding relating to property taxation to which the person who filed the statement or report or the owner of the property that is a subject of the statement, report, or information is a party." Further, section 552.149(b)(2) states information made confidential by section 552.149 may not be disclosed or used for any purpose except as evidence or argument at the hearing on the protest. We find the disclosure of information in a judicial or administrative proceeding as authorized by section 22.27(b)(4) of the Tax Code or section 552.149 of the Government Code does not constitute a voluntary release of information for purposes of section 552.007 of the Government Code. *See* Open Records Decision No. 358 at 3 (1983) ("section 22.27 prevents release of the information sought [by a member of the legislature] unless its release is authorized by subsection (b) of the statute"). Therefore, to the extent the responsive information was furnished to the district by property owners in connection with the appraisal of property and under a promise of confidentiality, the district must withhold that information under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. To the extent the responsive information relates to real property sales and was provided to the district by private entities, it must be withheld under section 552.149 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 402359

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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