



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2010

Mr. James R. Evans, Jr.
Hargrove & Evans, L.L.P.
For the Polk County Appraisal District
4425 Mo Pac South, Building 3, Suite 400
Austin, Texas 78735

OR2010-19142

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# 403794.

The Polk Central Appraisal District (the "district"), which you represent, received a request for all documents the district utilized to come up with the appraisal value for a specified property. 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 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).

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

¹We assume 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 those records contain substantially different types of information than those 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 indicate the information at issue in exhibit B-2 was furnished to the district by property owners in connection with the appraisal of property and is sometimes obtained after promises the information will be held confidential or under a district policy of confidentiality. Thus, to the extent the information at issue in exhibit B-2 was furnished to the district by property owners in connection with the appraisal of property and under promises of confidentiality, we find 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 at issue in exhibit B-2 was not furnished by property owners in connection with the appraisal of property and under promises 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.

You also seek to withhold information at issue in exhibit B-1 under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. You state the information in exhibit B-1 was obtained from brokers and private appraisers who have access to Multiple Listing Service ("MLS") data. We note, however, 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.* Accordingly, the information at issue in exhibit B-1 that was provided to the district by brokers and private appraisers who have access to MLS data 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) (section 22.27 of Tax Code 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. 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 Polk 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 information in exhibit B-1 was obtained from brokers and private appraisers who have access to MLS data. Therefore, we find the information at issue in exhibit B-1 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 he is a property owner and is protesting the valuation of his property by the district. Thus, the requestor argues section 552.149(b) gives him a right of access to the requested information. However, you state section 552.149(b) does not apply here because

the requestor's notice of protest was filed late. Thus, you assert such information is not subject to required disclosure under section 552.149(b). As this office is unable to make a determination on the timeliness of the notice of protest because it is outside our purview, *see* Gov't Code §§ 552.301, .306, we must rule conditionally. Accordingly, to the extent the requestor has filed a proper protest, the district must release the information subject to section 552.149(b) to the requestor. To the extent the requestor has not filed a proper protest, the district must withhold exhibit B-1 under section 552.149(a) of the Government Code.

In summary, to the extent the information at issue in exhibit B-2 was furnished to the district by property owners in connection with the appraisal of property and under promises of confidentiality, we find 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. To the extent the requestor has not filed a proper protest, exhibit B-1 must be withheld 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 403794

Enc. Submitted documents

c: Requestor
(w/o enclosures)