



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2011

Mr. James R. Evans, Jr.
Counsel for Cameron County Appraisal District
Hargrove & Evans, L.L.P.
4425 Mopac South, Building 3, Suite 400
Austin, Texas 78735

OR2011-09165

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# 421912.

The Cameron Appraisal District (the "district"), which you represent, received a request for all documents pertaining to a specified property and account. You claim the information submitted as Exhibits B-1 and B-2 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 provides 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

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.

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 represent, and the records reflect, the information in Exhibit B-2 was furnished to the district by property owners in connection with the appraisal of property. It does not appear that any of the exceptions in 22.27(b) apply in this instance. Based on your representations and our review, we find the rendition statements, real and personal property reports, attachments to those statements and reports, and income and expense information that were provided by property owners in connection with the appraisal of property is confidential under section 22.27 of the Tax Code, and must be withheld under section 552.101 of the Government Code. You also inform us sales price information voluntarily provided to the district by property owners is sometimes obtained after the district has promised the information will be kept confidential. We note section 22.27(a) is applicable to any voluntarily disclosed sales price information to the extent such information was obtained from property owners under a promise of confidentiality. Thus, to the extent any sales price information in Exhibit B-2 was voluntarily furnished to the district by property owners in connection with the appraisal of property and under promises of confidentiality, this information is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code. Any remaining information in Exhibit B-2 must be released.

You assert the information in Exhibit B-1 is also protected by section 22.27(a). 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 in Exhibit B-1 that was provided to the district by brokers and private appraisers with 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 of the Government Code 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). We therefore address your claim under section 552.149 of the Government Code for the information in Exhibit B-1.

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 applicability of subsections 552.149(a) and (b) is limited to those counties having a population of 50,000 or more. Act of May 31, 2011, 82nd Leg., R.S., S.B. 1130, § 1 (to be codified as an amendment to Gov't Code § 552.149(e)). We note Cameron County has a population of 50,000 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. You also state the requestor is not a party to any protest against the district. Furthermore, there is no indication in this instance that the requestor is a property owner or the agent of a property owner. Based on your representations and our review, we agree the information in Exhibit B-1 must be withheld under section 552.149(a) of the Government Code.

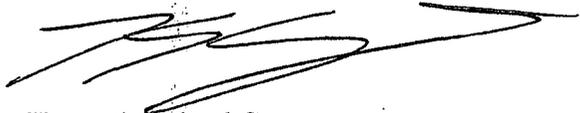
In summary, the district must withhold Exhibit B-1 under section 552.149(a) of the Government Code. To the extent the information in Exhibit B-2 was provided by property owners in connection with the appraisal of property and consists of rendition statements, real

and personal property reports, attachments to those statements and reports, and income and expense information, it must be withheld under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. To the extent any sales price information in Exhibit B-2 was voluntarily furnished to the district by property owners in connection with the appraisal of property and under promises of confidentiality, this information must be withheld under section 552.101 in conjunction with section 22.27(a) of the Tax Code. Any remaining information in Exhibit B-2 must be released.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eb

Ref: ID# 421912

Enc. Submitted documents

c: Requestor
(w/o enclosures)