



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 8, 2011

Ms. Judith A. Hargrove  
For Victoria Central Appraisal District  
Hargrove & Evans, L.L.P.  
4425 Mo Pac South, Building 3, Suite 400  
Austin, Texas 78735

OR2011-11338

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# 427155.

The Victoria Central Appraisal District (the "district"), which you represent, received four requests from the same requestor for all documents the district utilized to come up with the appraisal value for specified categories of property, including information the district holds, but does not intend to use in upcoming protest hearings. You claim that 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 representative sample of information.<sup>1</sup> We also have 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 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:

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<sup>1</sup>We assume that 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 that 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 indicate some of the submitted information 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 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 submitted information 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. *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 82<sup>nd</sup> Texas Legislature amended section 552.149 to limit the applicability of section 552.149(a) to those counties having a population of 50,000 or more. *See* Act of May 31, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1130, § 1 (to be codified as an amendment to Gov't Code § 552.149(e)). We note Victoria 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, 80<sup>th</sup> 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, 80<sup>th</sup> Leg., R.S. (2007).

You state some of the submitted information was obtained by the district from a local multiple listing service, with a promise it would not be disclosed to the public. The requestor asserts that the district "is not capable of obtaining sales information" from the local multiple listing service. In support of his assertion, the requestor has provided a copy of a letter from the Victoria Area Association of Realtors, Inc. (the "association"). The letter states that the association does not supply sales information from the local multiple listing service to the district because the district is not a member of the association and lacks authorized access to the data. Whether the district obtained any of the information at issue from a local multiple listing service is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Record Decision No. 522 at 4 (1990). Upon review, we find the information at issue 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 may have a right of access to certain information under section 552.149(b). As stated above, subsection (b) provides a property owner or the

owner's agent a right of access to information described by section 41.461(a)(2) of the Tax Code, information the chief appraiser took into consideration during the appraisal but does not plan to introduce at the hearing on the protest, and comparable sales data from a reasonable number of sales that is relevant to the matter to be determined by the appraisal board. Accordingly, if any of the information at issue pertains to property for which the district's valuation is under protest by the requestor as the property owner, then to the extent such information is responsive to the request, the district must release each item of information described by section 41.461(a)(2) of the Tax Code, 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, and 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. Conversely, if none of the information at issue pertains to property for which the district's valuation is under protest by the requestor as the property owner, the information at issue must be withheld under section 552.149(a) of the Government Code.

In summary, to the extent the information at issue was furnished to the district by property owners in connection with the appraisal of property and under promises of confidentiality, 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 information at issue was obtained from a local multiple listing service and the requestor does not have a right of access under section 552.149(b), the information at issue must be withheld under section 552.149(a) of the Government Code. Any remaining information 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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 427155

Enc. Submitted documents

c: Requestor  
(w/o enclosures)