



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2011

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

OR2011-12372

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# 427049 (HCAD Work Order No. 11-1976).

The Harris County Appraisal District (the "district") received a request for records related to a specified property. You claim the submitted information is excepted from disclosure under sections 552.136 and 552.149 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the district did not fully comply with section 552.301 of the Government Code. Section 552.301(b) requires a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request." 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 its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information it seeks to withhold; (2) a copy of the

¹Although you also raise section 552.305 of the Government Code as an exception to disclosure, section 552.305 is not an exception to public disclosure under the Act. Rather, this section addresses the procedural requirements for notifying third parties their interests may be affected by a request for information. See Gov't Code § 552.305.

written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish the date of receipt; and (4) the specific information the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). While the district timely raised and explained the applicability of section 552.149 of the Government Code, the district did not raise section 552.136 or explain its applicability until after its ten- and fifteen-business-day deadlines had passed. Generally, if a governmental body fails to timely raise an exception, that exception is waived. *See id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). However, mandatory exceptions to disclosure cannot be waived by a governmental body. *See Gov't Code* § 552.352; Open Records Decision No. 574 at n.4 (2001) (mandatory exceptions). Because section 552.136 of the Government Code is a mandatory exception that can provide a compelling reason for non-disclosure under section 552.302, we will consider the applicability of this exception along with section 552.149.

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)). Harris 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).

In this instance, you state, and the submitted documents reflect, that the information submitted in Exhibits B, C, and D relates to real property sales and was provided to the district by private entities. You state the requestor is not an owner of the property at issue or the agent of such an owner. Based on your representations and our review, the district must withhold Exhibits B, C, and D under section 552.149(a) of the Government Code. You also state Exhibit E contains iFile numbers that can be used to access the sales information found in Exhibits B, C, and D. However, you explain iFile numbers are created by the district, not provided to the district by a private entity so as to bring them within the purview of section 552.149. Therefore, the submitted iFile numbers may not be withheld under section 552.149 of the Government Code.

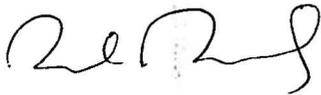
You also raise section 552.136 of the Government Code for the submitted iFile numbers. Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). You represent the iFile numbers in Exhibit E can be used to access confidential property information that is valuable to property owners and third party professionals involved in the protests of property tax appraisals. Based on your representations and our review, we agree the submitted iFile numbers are access device numbers for purposes of section 552.136(a) and the district must withhold them under section 552.136(b) of the Government Code. As you raise no other exceptions to disclosure, the remaining information in Exhibit E must be released.

In summary, the district must withhold Exhibits B, C, and D under section 552.149(a) of the Government Code, as well as the iFile numbers in Exhibit E under section 552.136(b) of the Government Code. The remaining information in Exhibit E 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/agn

Ref: ID# 427049

Enc. Submitted documents

c: Requestor
(w/o enclosures)