



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 21, 2011

Ms. Judith A. Hargrove  
Counsel for Victoria Central Appraisal District  
Hargrove & Evans, L.L.P.  
4425 Mopac South, Building 3, Suite 400  
Austin, Texas 78735

OR2011-13613

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# 430582.

The Victoria Central Appraisal District (the "district"), which you represent, received a request for the "Ratio Study for the Cimarron Subdivision."<sup>1</sup> You claim some of 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>2</sup>

Initially, we must address the district's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate

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<sup>1</sup>As you have not submitted the request for information for our review, we take our description from your brief.

<sup>2</sup>We assume the "representative sample" of information submitted to this office is truly representative of the information at issue. 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.

which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). As of the date of this letter, you have not submitted a copy of the written request for information for our review. Thus, we find the district failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630(1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because sections 552.101 and 552.149 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the information at issue.

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 made confidential 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 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. 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 the district must withhold that

information under section 552.101 of the Government Code. However, to the extent the information at issue 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 the district may not withhold it under section 552.101 of the Government Code. *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 [required public disclosure].

(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 Eighty-Second 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. Although the submitted information reflects the requestor in this instance may be a property owner, there is no indication the requestor is a party to any protest against the district. Thus, based on your representations and our review, we agree the district must withhold the information obtained from a local multiple listing service 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 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 information at issue was obtained by the district from a local multiple listing service, the district must withhold that information under section 552.149(a) of the Government Code. The district must release any remaining requested information.

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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 430582

Enc. Submitted documents

c: Requestor  
(w/o enclosures)