



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2011

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

OR2011-13814

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# 430885.

The Morris County Appraisal District (the "district") received a request for (1) "the dates and locations of each training or education event presented by any agency of the State of Texas" and attended by any district employee or board member for a specified period of time, (2) "any [i]nsurance [p]olicy with coverage of [e]rrors and [o]missions in effect" for a specified period of time, (3) "a copy of all audio recordings of ARB hearings held by the [district]" for a specified period of time, (4) all district appraiser's notes for twelve specified addresses for a specified period of time, and (5) "a copy of all market sales data of each residential neighborhood in the district that include and identify any foreclosed residential property sales." You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.110, and 552.149 of the Government Code. You also inform us that release of this information may implicate the proprietary interests of the Longview Area Association of Realtors (the "LAAR"). Accordingly, you inform us you have notified the LAAR of the request and of its right to submit comments to this office as to why the submitted information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We

have received comments from the LAAR. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have not submitted information responsive to items one, two, or three of the instant request. Because you have not submitted information responsive to these portions of the request for our review, we assume you have released it to the extent it exists. Gov't Code §§ 552.301, .302. If you have not released this information, you must do so at this time. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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:

(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 state the information you have marked in Exhibit B 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 you have marked in Exhibit B 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 the district may not withhold this information 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, will address your claim under section 552.110 of the Government Code as well as your and the LAAR's claims

under section 552.149 of the Government Code for the responsive information you have marked in Exhibit B.

Although the district raises section 552.110 of the Government Code for the information you have marked in Exhibit B, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district's argument under section 552.110 for the responsive information you have marked in Exhibit B.<sup>1</sup>

Finally, the district and the LAAR assert section 552.149 of the Government Code, which 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 Texas Legislature recently amended section 552.149 to limit the applicability of subsections 552.149(a) and (b) to those counties having a population of 50,000 or more. 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 that Morris County has a population

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<sup>1</sup>We note the LAAR does not assert 552.110 of the Government Code.

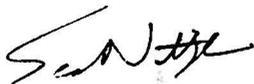
of less than 50,000.<sup>2</sup> Accordingly, section 552.149 is not applicable to any of the information you have marked in Exhibit B, and the district may not withhold it on that basis.

Lastly, we note some of the submitted information is subject to common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is protected by common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the district must release the remaining information to the requestor.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>The population of Morris County was 12,934 in 2010. U.S. Bureau of the Census, State and County Quick Facts, available at <http://quickfacts.census.gov/qfd/states/48/48343.html>.

Ref: ID# 430885

Enc. Submitted documents

c: Requestor  
(w/o enclosures)