



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 4, 2011

Mr. James G. Nolan
Open Records Attorney
Open Records Division
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2011-14362

Dear Mr. Nolan:

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# 431830 (CPA ID# 7440388533).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for 2010 and 2011 Electronic Appraisal Roll Submission ("EARS") data submitted to the comptroller by county appraisal districts ("CADs"). You state the data files for 2011 do not yet exist.¹ You claim portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We 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.

You assert sections 25.025 and 25.026 of the Tax Code make confidential all the names and addresses in the EARS data at issue. Section 25.02 of the Tax Code prescribes the information CAD appraisal records must contain. *See* Tax Code § 25.02. This information includes the name and address of the owner of the property. *See id.* § 25.02(a)(1). Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. Section 25.025 states, in pertinent part:

(a) This section applies only to:

- (1) a current or former peace officer as defined by Article 2.12, Code of Criminal Procedure;
- (2) a county jailer as defined by Section 1701.001, Occupations Code;
- (3) an employee of the Texas Department of Criminal Justice;
- (4) a commissioned security officer as defined by Section 1702.002, Occupations Code;
- (5) a victim of family violence as defined by Section 71.004, Family Code, if as a result of the act of family violence against the victim, the actor is convicted of a felony or a Class A misdemeanor;
- (6) a federal judge, a state judge, or the spouse of a federal judge or state judge;
- (7) a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;
- (8) an officer or employee of a community supervision and corrections department established under Chapter 76, Government Code, who performs a duty described by Section 76.004(b) of that code;
- (9) a criminal investigator of the United States as described by Article 2.122(a), Code of Criminal Procedure;
- (10) a police officer or inspector of the United States Federal Protective Service; . . .

(11) a current or former United States attorney or assistant United States attorney and the spouse and child of the attorney[; and]

(11) a current or former employee of the office of the attorney general who is or was assigned to a division of that office the duties of which involve law enforcement.

...

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the [CAD], this state, the comptroller, and taxing units and political subdivisions of this state if:

(1) the information identifies the home address of a named individual to whom this section applies; and

(2) the individual chooses to restrict public access to the information on the form prescribed for that purpose by the comptroller under Section 5.07.

(c) A choice made under Subsection (b) remains valid until rescinded in writing by the individual.

(d) This section does not prohibit the public disclosure of information in appraisal records that identifies property according to an address if the information does not identify an individual who has made an election under Subsection (b) in connection with the individual's address.

Act of May 19, 2011, 82nd Leg., R.S., H.B. 3307, § 1 (to be codified at Tax Code § 25.025(a)(11)); Act of May 25, 2011, 82nd Leg., R.S., H.B. 1046, § 3 (to be codified at Tax Code § 25.025(a)(11)); Tax Code § 25.025(b)-(d). Thus, under section 25.025, a property owner's address is "confidential and available only for the official use of the [CAD], this state, the comptroller, and taxing units and political subdivisions of this state" if a named individual to whom section 25.025 applies chooses to restrict public access to this information on the form prescribed for that purpose by the comptroller under section 5.07 of the Tax Code. Tax Code § 25.025(b)(2). You state the request for confidentiality forms are completed and filed by eligible individuals only with the CADs in which the eligible persons reside. You also state these forms are not filed with the comptroller. You have submitted to this office a blank copy of the request for confidentiality form. This form, Texas Property Tax Form 50-284 (08-09/5), "requests that the [CAD] maintain confidentiality of home addresses" of individuals protected by section 25.025(a) of the Tax Code. The form further states, "By filing this document with the [CAD], information in the

appraisal records that identifies [an individual's] home address will be restricted from public access until [the individual] rescind[s] the request in writing.”

Section 25.026 of the Tax Code states:

(a) In this section:

(1) “Family violence shelter center” has the meaning assigned by Section 51.002, Human Resources Code.

(2) “Sexual assault program” has the meaning assigned by Section 420.003, Government Code.

(3) “Victims of trafficking shelter center” means a program that:

(A) is operated by a public or private nonprofit organization;
and

(B) provides comprehensive residential and nonresidential services to victims of trafficking of persons under Section 20A.02, Penal Code.

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the [CAD], this state, the comptroller, and taxing units and political subdivisions of this state if the information identifies the address of a family violence shelter center, a sexual assault program, or a victims of trafficking shelter center.

Act of May 24, 2011, 82nd Leg., R.S., H.B. 2329, § 3 (to be codified as an amendment to Tax Code § 25.026). Thus, under section 25.026, information in appraisal records is “confidential and is available only for the official use of the [CAD], this state, the comptroller, and taxing units and political subdivisions of this state” if it identifies the address of a family violence shelter center, a sexual assault program, or a victims of trafficking shelter center. *Id.*

You assert the submitted information consists of EARS data submitted by CADs that contains named owners' addresses made confidential by section 25.025 of the Tax Code and information identifying the addresses of family violence shelter centers, sexual assault programs, or victims of trafficking shelter centers made confidential by section 25.026 of the Tax Code. However, you inform us the comptroller is unable to determine which addresses in the submitted information are confidential. You contend because the comptroller cannot determine whether a particular address is confidential, the comptroller must therefore withhold all names and addresses in the submitted information. You acknowledge redacting

all names and addresses in the submitted information would result in withholding non-confidential information from the requestor. You argue “appraisal roll information that is only redacted for the confidential names and addresses is already available to the public directly from the individual CAD[s] . . . , and that nearly all the CAD[s] have their appraisal rolls posted to publicly accessible websites.”

We first address your statement that the requested information is available in redacted form on publicly accessible websites. Section 552.228(a) of the Government Code requires a governmental body to provide a requestor with a “suitable copy” of requested public information. Gov’t Code § 552.228(a). Therefore, regardless of whether the requested information may be obtained from another governmental body, the comptroller must either claim exceptions to disclosure of the information in accordance with section 552.301 of the Government Code or release the information to the requestor. *See id.* §§ 552.301(a), (e)(1)(A), .302. Moreover, “[a] public information officer does not fulfill his or her duty under the Act by simply referring a requestor to a governmental body’s website for requested public information.” Open Records Decision No. 682 at 7 (2005); Gov’t Code §§ 552.203(a), .221(a), (b). Instead, section 552.221 of the Government Code requires a governmental body “to either provide the information for inspection or duplication in its offices or to send copies of the information by first class United States mail.” ORD 682 at 7; *see* Gov’t Code § 552.221(b). Thus, the comptroller must provide access to or copies of the responsive information to the requestor to the extent the information is not excepted from required public disclosure.³

You inform us the CADs submitted the EARS data to the comptroller as required by section 9.3059 of title 34 of the Texas Administrative Code. *See* 34 T.A.C. § 9.3059 (requiring chief appraiser of CAD to submit certified copy of annual appraisal roll to comptroller). We agree the EARS data includes information required by section 25.02 of the Tax Code. Tax Code § 25.02. Thus, the EARS data consists of information in appraisal records for purposes of sections 25.025 and 25.026. *Id.* §§ 25.025(b), .026(b).

Both sections 25.025 and 25.026 state the appraisal record information they cover “is confidential and is available only for the official use of” the CAD, the comptroller, and other specified entities. Thus, we believe both statutes allow a CAD to make available the confidential appraisal records to the comptroller for the comptroller’s “official use” and deem confidential the information when it is in the comptroller’s possession. *See id.* §§ 25.025(b), .026(b).

Therefore, to the extent a property owner to whom section 25.025 applies has filed a request for confidentiality with a CAD and has not revoked it, the comptroller must withhold that owner’s home address from the submitted information under section 552.101 of the

³However, a requestor may agree to accept information on a governmental body’s website in fulfillment of a request for information under the Act. *See* ORD 682 at 7.

Government Code in conjunction with section 25.025 of the Tax Code. *Id.* § 25.025(b); *see* ORD 674 at 5 (requiring Texas State Library and Archives Commission to protect information of Board of Plumbing Examiners (“board”) employee who had filed election for confidentiality with the board under Gov’t Code § 552.024). To the extent any submitted information identifies the address of a family violence shelter center, a sexual assault program, or a victims of trafficking shelter center, the comptroller must withhold it under section 552.101 of the Government Code in conjunction with section 25.026 of the Tax Code. Tax Code § 25.026(b); *see* ORD 674 at 5. In order to ascertain whether the information is confidential, the comptroller must ask the originating CADs whether a qualified individual chose to keep his or her information confidential under section 25.025 of the Tax Code and whether the information identifies the address of a family violence shelter center, a sexual assault program, or a victims of trafficking shelter center subject to section 25.026 of the Tax Code.⁴ *See* ORD 674 at 5 (requiring Texas State Library and Archives Commission to inquire of originating governmental body whether individual elected to keep home address confidential pursuant to Gov’t Code § 552.024).

However, you have marked as confidential not only the owners’ addresses, but also the owners’ names. Because the requestor in this case does not seek information concerning a specified address, the information at issue does not identify individuals who have made elections under section 25.025(b) and is, consequently, not confidential under that statute. Tax Code § 25.025(d). Therefore, the comptroller may not withhold the owners’ names under section 552.101 on that basis. Furthermore, because the remaining information is not confidential under section 25.025 or 25.026, and because you have raised no other exception to the required public disclosure of the remaining information at issue, the comptroller must release it to the requestor.⁵

You also ask this office to issue a previous determination permitting the comptroller to withhold confidential names and addresses from CAD data for 2001 through 2009 and 2011 under section 552.101 of the Government Code in conjunction with sections 25.025 and 25.026 of the Tax Code. We decline to issue such a previous determination at this time. Accordingly, 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.

⁴We believe “home address” in section 25.025 and “address” in section 25.026 do not include a post office box. Because a post office box number does not disclose a person’s “home address” or “address” for purposes of these sections, the comptroller may not withhold any post office box numbers under section 552.101 of the Government Code in conjunction with section 25.025 or 25.026 of the Tax Code.

⁵You acknowledge the EARS data includes “non-confidential names and addresses of non-eligible persons and entities.”

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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison", with a long horizontal flourish extending to the right.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 431830

Enc. Submitted documents

c: Requestor
(w/o enclosures)