



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2011

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

OR2011-15651

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# 434166 (HCAD Reference No. 11-2839-2844).

The Harris County Appraisal District (the “district”) received five requests from the same requestor for information pertaining to five specified account numbers.¹ You claim 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.² We have also considered comments

¹You state, and provide documentation showing, the district sought and received clarification of the requests. *See* Gov’t Code § 522.222(b) (stating if information requested is unclear or large amount has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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.

submitted by the requestor. *See* Gov't Code § 552.304 (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." *Id.* § 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 argue some of the submitted information is confidential under section 22.27(a). We understand the district is an appraisal office for purposes of section 22.27. You indicate the documents submitted in Exhibits D-2, E-2, F-2, G-2, and H-2 contain information received from "individuals or individual entities under section 22.27" of the Tax Code and indicate the information was submitted by property owners in connection with the appraisal of property and under a promise of confidentiality. You do not inform us any of the exceptions in section 22.27(b) apply in this instance. *See id.* § 22.27(b). Thus, based upon your representations, we find Exhibits D-2, E-2, F-2, G-2, and H-2 are confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code.

Next, you claim section 552.149 of the Government Code for the remaining information. Section 552.149 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[.]

Gov't Code § 552.149(a)-(b). The Eighty-Second 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, 82nd Leg., R.S., S.B. 1130, § 1 (to be codified as an amendment to Gov't Code § 552.149(e)). We note 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 the multiple listing service (the "MLS") 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 MLS agencies 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 the MLS 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 D-1, E-1, F-1, G-1, and H-1 relates to real property sales and was provided to the district by private entities. You state, and the submitted information reflects, the requestor is not an owner of the properties at issue or the agent of such an owner. Based on your representations and our review, the district must withhold Exhibits D-1, E-1, F-1, G-1, and H-1 under section 552.149(a) of the Government Code.

In summary, Exhibits D-2, E-2, F-2, G-2, and H-2 are confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code. The district must withhold Exhibits D-1, E-1, F-1, G-1, and H-1 under section 552.149(a) of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/ag

Ref: ID# 434166

Enc. Submitted documents

cc: Requestor
(w/o enclosures)