



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2011

Mr. James R. Evans, Jr.
Hargrove & Evans, L.L.P.
Building 3, Suite 400
4425 Mopac South
Austin, Texas 78735

OR2011-16979

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# 436313.

The Cameron Appraisal District (the "district"), which you represent, received a request for documentation regarding the verification of sales for eleven specified properties. 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 information. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

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(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b). In addition, 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 which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the district received the request for information on August 24, 2011. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. Thus, the district's ten-business-day deadline was September 8, 2011, and its fifteen-business-day deadline was September 15, 2011. However, you did not request a ruling until September 13, 2011. Further, you did not submit the information required by section 552.301(e) until September 21, 2011. 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.

Next, we understand the requestor to argue that because the district previously released portions of the submitted information, the district may not now withhold the information it previously released. Section 552.007 of the Government Code generally prohibits selective disclosure of information that a governmental body has voluntarily made available to any member of the public. *See* Gov't Code § 552.007. Section 552.007 provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See id.*; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision Nos. 490 (1988), 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). The district argues that the information at issue is confidential under sections 552.101 and 552.149 of the Government Code, which make information confidential by law. Thus, regardless of whether the district previously released any of the information at issue, we must address whether the information is made confidential by law and must now be withheld pursuant to sections 552.101 and 552.149 of the Government Code.

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, 82nd Leg., R.S., S.B. 1130, § 1 (to be codified as an amendment to Gov't Code § 552.149(e)). We note Cameron 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). You state the information you have marked was obtained by the district from local multiple listing services. Upon review of your arguments and the information at issue, we agree the marked information is subject to section 552.149.

In her comments to this office, the requestor contends she is a party to a protest. Although the requestor filed a protest against the district, the requestor acknowledges the appraisal review board held a hearing on the protest, determined the protest, and issued its orders.

Nevertheless, the requestor asserts she is a party to a protest because she filed an appeal to the appraisal review board's orders under section 41A.01 of the Tax Code. *See* Tax Code § 41A.01 (providing property owner entitled to appeal appraisal review board order through binding arbitration). However, we note section 552.149(b) applies solely to pending protest hearings before an appraisal review board. As previously noted, the appraisal review board held a hearing on the requestor's protest and has issued its orders. Thus, because the requestor is not a party to a pending protest before the appraisal review board, section 552.149(b) does not apply. Accordingly, we find the district must withhold the marked information under section 552.149(a) of the Government Code.¹ The remaining information 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 436313

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.