



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2012

Mr. Braden W. Metcalf
Counsel for the Atascosa County Appraisal District
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2012-14726

Dear Mr. Metcalf:

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# 465194.

The Atascosa County Appraisal District (the "district"), which you represent, received two requests for several categories of information pertaining to specified tax protests.¹ You claim that the submitted 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.

Initially, we note you only submitted the agricultural lease and multiple listing service information. You have not submitted information responsive to the remaining categories of one of the requests. To the extent information responsive to the other categories existed and was maintained by the district on the date the district received the request, we assume you have released it. If you have not released such information, you must do so at this time. See Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if

¹This office originally assigned identification numbers 465194 and 465196 to these separate requests for a ruling. These requests have been combined and are being issued as one ruling with the identification number noted above.

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.” *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes. You contend the information in Exhibit B is confidential under section 23.45 of the Tax Code. We understand the district is charged with administering special valuations for certain types of agricultural property, including land designated for agricultural use and open space land. *See* Tex. Const. art. VIII, §§ 1-d, 1-d-1. A property owner seeking a special designation must submit an application to the district; the requirements of each application are contained in different subchapters of the Tax Code, which contain different requirements for valuation. Subchapter C of chapter 23 of the Tax Code addresses land designated for agricultural use, while subchapter D addresses qualified open space land. You note that under subchapter C, section 23.45 provides “[a]n application for agricultural designation filed with a chief appraiser is confidential and not open to public inspection.” Tax Code § 23.45(a). Further, you inform us the information at issue consists of data obtained from applications filed with the district pursuant to section 23.45(a). *Id.* (confidentiality applicable to both application and information contained therein).

The information at issue contains information pertaining to “1-d” agricultural designation applications and “1-d-1” open space valuation designations. Open space valuation designations are governed under subchapter D, which does not include the section 23.45(a) language present in subchapter C. Thus, we find that section 23.45(a) applies only to an application filed under subchapter C. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality). Accordingly, the portions of the information in Exhibit B that were obtained from applications filed under subchapter C are confidential and must be withheld under section 552.101 in conjunction with section 23.45 of the Tax Code. However, we find section 23.45(a) of the Tax Code is not applicable to the remaining information and that information may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses 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 the information in Exhibit C is confidential under section 22.27(a). We note section 22.27(a) is applicable only to “information the owner of property provides to the appraisal office in connection with the appraisal of the property[.]” *Id.* (emphasis added). *Cf.* Open Records Decision No. 550 at 7 (1990) (Tax Code § 22.27 not applicable to information compiled by private market research firm and provided to appraisal district). You state the information at issue was obtained from a multiple listing service. Thus, the district did not obtain the information at issue from the owners of the properties to which this information pertains. We therefore conclude the information at issue is not confidential under section 22.27(a) of the Tax Code and may not be withheld on that basis under section 552.101 of the Government Code. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

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 the requirements of [the Act].

Gov't Code § 552.149(a). 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 id.* § 552.149(e). We note Atascosa County has a population of less than 50,000.² Accordingly, section 552.149 is not applicable to the submitted information and the district may not withhold any of it on that basis.

In summary, the district must withhold the portions of the information in Exhibit B that were obtained from applications filed under subchapter C under section 552.101 in conjunction with section 23.45 of the Tax Code. The remaining information must be released to the respective requestors.

²The population of Atascosa County was 44,911 in 2010. U.S. Bureau of the Census, State and County Quick Facts, available at <http://quickfacts.census.gov/qfd/states/48/48013.html>.

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,

A handwritten signature in black ink that reads "Sean Opperman". The signature is written in a cursive style with a long horizontal flourish at the end.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 465194

Enc. Submitted documents

c: Requestor
(w/o enclosures)