



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2012

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

OR2012-15770

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# 466767 (HCAD Reference No. 12-2643).

The Harris County Appraisal District (the "district") received a request for information pertaining to two specified properties. You claim some of the submitted information is not subject to the Act. Additionally, 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 representative sample of information.¹

Initially, we address your contention that a portion of the submitted information is not subject to the Act. The Act applies to "public information," which is defined in section 552.002 of the Government Code as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, information that is

¹We 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.

collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987).

You state a portion of the requested information pertains to the working papers of an outside appraisal firm the district has contracted with, and thus is not subject to the Act. Section 25.01(c) of the Tax Code provides as follows:

A contract for appraisal services for an appraisal district is invalid if it does not provide that copies of the appraisal, together with supporting data, must be made available to the appraisal district and such appraisals and supporting data shall be public records. "Supporting data" shall not be construed to include personal notes, correspondence, working papers, thought processes, or any other matters of a privileged or proprietary nature.

Tax Code § 25.01(c). You explain that the district has contracted with an outside appraisal firm to perform the appraisals of the properties referenced in the instant request for information. You further explain that Exhibits 6 through 10 are working papers maintained solely by the private appraisal firm. An outside appraisal firm is not required to provide this type of information to the district and the district does not own this information or have a right of access to it. Open Records Decision No. 550 (1990) at n.2. Based on your representations and our review, we agree that the working papers of the outside appraisal firm that are not maintained by the district are not public information subject to required public disclosure under the Act. *See* Gov't Code § 552.002(a).

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 assert that Exhibits 3 and 4 are confidential under section 22.27(a) of the Tax Code. We understand the district is an appraisal office for purposes of section 22.27. You state the information contained in Exhibits 3 and 4 was furnished to the district by property owners in connection with the appraisal of property and was obtained after promises the information would be held confidential. You indicate none of the exceptions in section 22.27(b) apply in this instance. Thus, we find Exhibits 3 and 4 are confidential under section 22.27(a) of the Tax Code, and must be withheld under section 552.101 of the Government Code.

Section 552.149 of the Government Code provides, in relevant part, as follows:

(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 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 the information you

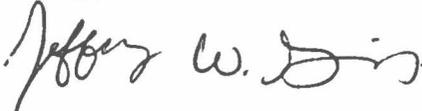
have submitted as Exhibit 2 relates to real property sales and was provided to the district by private entities. You state the requestor is not the owner of either of the properties at issue or the agent of such an owner. Based on your representations and our review, we find the district must withhold the information you have submitted as Exhibit 2 under section 552.149(a) of the Government Code.

In summary, the working papers of the outside appraisal firm that are maintained solely by this firm are not subject to the Act and need not be released. The district must withhold Exhibits 3 and 4 under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. The district must also withhold Exhibit 2 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/tch

Ref: ID# 466767

Enc. Submitted documents

c: Requestor
(w/o enclosures)