



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2012

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

OR2012-16150

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# 469387 (HCAD Internal Reference No. 12-2697B).

The Harris County Appraisal District (the "district") received a request for the 2011 and 2012 appraisal appeal records of specified district accounts. You state the district will release some of the requested information but claim some of the submitted information is excepted from disclosure under sections 552.136 and 552.149 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note some of the information you have submitted to us for review is not responsive to the request for information because it does not pertain to the specified district accounts. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release this information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

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<sup>1</sup>We 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.

Next, the district acknowledges, and we agree, you failed to comply with the procedural requirements of section 552.301 of the Government Code. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Sections 552.136 and 552.149 of the Government Code can provide compelling reasons to overcome this presumption. Therefore, we will consider whether these sections require the district to withhold the responsive information.

Section 552.136 of the Government Code provides in part the following:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136(a)-(b). You represent the iFile number in Exhibit C can be used to access confidential property information that is valuable to property owners and third-party professionals involved in the protests of property tax appraisals. Based on your representations and our review, we agree the iFile number at issue is an access device number for purposes of section 552.136(a). Accordingly, the district must withhold this iFile number, which we have marked, under section 552.136(b) of the Government Code. However, we find you have not demonstrated how any of the remaining information you have marked consists of an access device number for purposes of section 552.136. Thus, the district may not withhold any of the remaining information you have marked on this ground.

Next, you claim section 552.149 of the Government Code for portions of the remaining responsive information. Section 552.149 provides, in relevant part, the following:

(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 . . . .

*Id.* § 552.149(a)-(b). Subsections 552.149(a) and (b) are limited to those counties having a population of 50,000 or more. *Id.* § 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). You state the responsive information you have marked in Exhibit B relates to real property sales and was provided to the district by a private entity. You also state 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, we conclude the district must withhold the responsive information you have marked under section 552.149(a) of the Government Code.

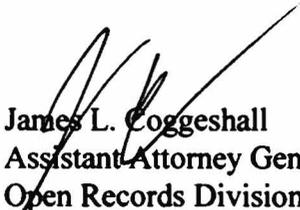
To conclude, the district must withhold the information we have marked under section 552.136 of the Government Code. The district must also withhold the responsive information you have marked under section 552.149(a) of the Government Code. The district must release the remaining responsive information.

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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 469387

Enc. Submitted documents

c: Requestor  
(w/o enclosures)