



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 26, 2013

Mr. Taylor T. Steele  
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One Moody Plaza, 18th Floor  
Galveston, Texas 77550-7998

OR2013-06923

Dear Mr. Steele:

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# 485286.

The Galveston County Appraisal District (the "district"), which you represent, received a request for seven categories of information pertaining to nine specified account numbers. We understand the district has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.149 of the Government Code.<sup>1</sup> 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 section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written

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<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with section 552.103 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).*

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). The district received the request for information on September 19, 2012. However, the envelope in which the district provided the information required by subsections 552.301(b) and 552.301(e) was postmarked February 19, 2013. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 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 there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. The district claims section 552.103 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.103 of the Government Code. However, because sections 552.101 and 552.149 of the Government Code can provide compelling reasons to overcome the presumption of section 552.302, we will address your arguments under these exceptions for the submitted information.

Next, you state some of the submitted information was prepared for the district by Hugh L. Landrum Associates, Inc., an outside appraiser. 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). The effect of this provision is to make public the appraisal and “supporting data” that were provided to the district. *See* Attorney General Opinion JC-0424 at 2 (2001) (section 25.01(c) provides that certain information used or created by appraisal firm must be made available to appraisal district and deems that information public). Exceptions to disclosure under the Act, such as section 552.149 of the Government Code, generally do not apply to information that is made public by other statutes, such as section 25.01(c). *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Further, subsection 22.27(b)(6) of the Tax Code provides information made confidential by subsection 22.27(a) of the Tax Code may be disclosed if and to the extent such information is required to be included in a public document or record the appraisal office is required to prepare or maintain. *See* Tax Code § 22.27(b)(6). Therefore, to the extent the submitted information constitutes an appraisal or supporting data for purposes of section 25.01(c), such information is a public record which must be released to the requestor. To the extent the submitted information does not constitute an appraisal or supporting data for the purposes of 25.01(c), we will consider your arguments under sections 552.101 and 552.149 of the Government Code.

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 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 state the documents in Exhibit 7 contain “rendition statements” of property owners other than the requestor and “other information provided by the property

owners other than the [requestor] to the [district] in connection with the appraisal of the other properties.” You also state the information in Exhibit 6 contains information obtained from property owners. You do not inform us any of the exceptions in section 22.27(b) apply in this instance. *See id.* § 22.27(b). Based on your representations, we find most of the submitted information that was provided by property owners in connection with an appraisal is confidential pursuant to section 22.27 of the Tax Code and must be withheld under section 552.101 of the Government Code. However, you do not explain whether the submitted sales price information was submitted by property owners under a promise of confidentiality. Thus, to the extent the submitted sales price information was furnished to the district by property owners in connection with the appraisal of property and under a promise of confidentiality, we find the sales price information is confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code. However, to the extent the sales price information was not furnished by property owners in connection with the appraisal of property and under a promise of confidentiality, the information is not confidential under section 22.27(a) of the Tax Code and may not be withheld under section 552.101 of the Government Code on that basis.

Next, you claim section 552.149 of the Government Code for any 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). 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 Galveston 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). Because you state the sales price information at issue was provided by property owners, that information is not confidential under section 552.149(a) of the Government Code and may not be withheld on that basis. You indicate the remaining information includes information obtained from private entities. Therefore, we find to the extent the remaining information relates to real property sales prices, descriptions, characteristics, and other related information that was provided to the district by private entities, it is generally confidential under section 552.149(a) of the Government Code. Conversely, to the extent the remaining information does not relate to real property sales prices, descriptions, characteristics, and other related information or was not provided to the district by private entities, it is not confidential under section 552.149(a) and it may not be withheld on that basis.

However, pursuant to section 552.149(b) of the Government Code, a property owner or the owner's designated agent has a right of access to certain information that is confidential under section 552.149(a). We note the submitted documentation reveals a protest was filed regarding a property of which the requestor may be an owner or an agent of the owner. Thus, the requestor may have a right of access to certain information about that property under section 552.149(b). As stated above, subsection (b) provides a property owner or the owner's agent a right of access to information described by section 41.461(a)(2) of the Tax Code, information the chief appraiser took into consideration during the appraisal but does not plan to introduce at the hearing on the protest, and comparable sales data from a reasonable number of sales that is relevant to the matter to be determined by the appraisal board. *See Gov't Code § 552.149(b)*. Accordingly, if the requestor is the owner or the agent of the owner of the property at issue, then to the extent such information is responsive to the request, the district must release each item of information described by section 41.461(a)(2) of the Tax Code, 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, and 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. In that instance, the district must withhold any remaining information that was provided by private entities under section 552.149(a) of the Government Code. However, if the requestor is not an owner or an agent of an owner of the property at issue, then the district must withhold any remaining information that was provided to the district by private entities under section 552.149(a) of the Government Code.

In summary, to the extent the submitted information constitutes an appraisal or supporting data for purposes of section 25.01(c) of the Tax Code, such information is a public record that must be released to the requestor. The district must withhold most of the information that was provided by property owners in connection with an appraisal under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code; however, the submitted sales price information may be withheld only to the extent the information was furnished to the district by property owners under a promise of confidentiality. If the

requestor is the owner or the agent of the owner of the property at issue, then to the extent such information is responsive to the request, the district must release each item of information described by section 41.461(a)(2) of the Tax Code; 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; and 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 to this requestor. In that instance, the district must withhold any remaining information that was provided by private entities under section 552.149(a) of the Government Code. If the requestor is not an owner or an agent of an owner of the property at issue, then the district must withhold any remaining information that was provided to the district by private entities under section 552.149(a) of the Government Code. Any 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 486286

Enc. Submitted documents

c: Requestor  
(w/o enclosures)