



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2013

Mr. E. Barry Gaines
Legal Counsel
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR2013-15332

Dear Mr. Gaines:

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# 498156 (HCAD internal reference no. 13-2784).

The Harris County Appraisal District (the "district") and the Appraisal Review Board of Harris County (the "ARB") received a request for all documents pertaining to a specified property for a specified tax year. You state the ARB has no information responsive to the instant request for information.¹ You assert the district is not required to respond to the request. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.136, 552.137, and 552.149 of the Government Code. You also notified Pictometry International, Corp. ("Pictometry") of the request and of its right to submit comments to this office as to why the submitted information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have considered your arguments and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Initially, we address your assertion the district is not required to respond to the instant request for information. You state the request was mailed in an envelope addressed to the district, but the actual letter inside the envelope was addressed to the ARB. You explain the district and the ARB share a physical address and public information coordinator, but are separate entities. We note a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9(1990). Upon review, we find the district has made a good-faith effort to relate the request to the information the district maintains, and the submitted information is responsive to the request. Accordingly, we will determine whether the district must release the submitted information to the requestor under the Act.

Section 552.101 of the Government Code exempts 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 Exhibits 8A and 8B 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 at issue was furnished to the district by the property owner in connection with the appraisal of property and was obtained after promises the information would be held confidential. You state none of the exceptions in section 22.27(b) apply in this instance. Thus, we find Exhibits 8A and 8B are confidential under section 22.27(a) of the Tax Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 11.48 of the Tax Code, which provides, in pertinent part:

(a) A driver's license number, personal identification certificate number, or social security account number provided in an application for an exemption

filed with a chief appraiser is confidential and not open to public inspection. The information may not be disclosed to anyone other than an employee of the appraisal office who appraises property, except as authorized by Subsection (b).

Id. § 11.48(a). Upon review, we agree the submitted application for an exemption in Exhibit 7 contains a personal identification certificate number. You do not indicate, nor does it appear to this office, that any of the release provisions of section 11.48(b) apply in this instance. *See id.* § 11.48(b) (listing five exceptions to confidentiality provision of section 11.48(a)). Thus, the personal identification certificate number provided in the submitted exemption form, which you have marked, must be withheld under section 552.101 in conjunction with 11.48(a) of the Tax Code.

Section 552.136 of the Government Code states “[n]otwithstanding 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(b). Section 552.136(a) defines “access device” as “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 . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). You represent the information you have marked in Exhibits 6A-6E is an iFile number that can be used to access confidential property information. You state this confidential property information 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 you have marked constitutes an access device number for purposes of section 552.136(a). Accordingly, the district must withhold the information you have marked in Exhibits 6A-6E under section 552.136(b) of the Government Code.²

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the e-mail address you have marked in

²Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov’t Code § 552.136(c). If a governmental redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

Exhibits 5A and 5B consists of an e-mail address subject to section 552.137(c). Accordingly, the district may not withhold this e-mail address under section 552.137 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 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). 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. *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. *Id.* In this instance, you state the information in Exhibits 2A-2J, 3, and 4 relates to real property sales and was provided to the district by private entities. You state the requestor has not represented he is an owner 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 Exhibits 2A-2J, 3, and 4 under section 552.149(a) of the Government Code.³

In summary, the district must withhold Exhibits 8A and 8B under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. The district must withhold the personal identification certificate number provided in the submitted exemption form in Exhibit 7, which you have marked, under section 552.101 of the Government Code

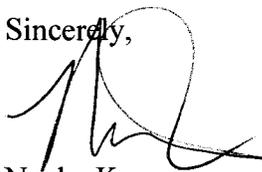
³As our ruling is dispositive, we need not address Pictometry's interests in the information at issue.

in conjunction with 11.48(a) of the Tax Code. The district must withhold the information you have marked in Exhibits 6A-6E under section 552.136(b) of the Government Code. The district must withhold Exhibits 2A-2J, 3, and 4 under section 552.149(a) of the Government Code. The district must release the remaining 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 498156

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)