



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2014

Ms. Catelyn H. Kostbar
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR2014-01130

Dear Ms. Kostbar:

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# 511346.

The Harris County Appraisal District (the "district") received a request for the detailed appraisal data used by the district and the data submitted at arbitration review board hearings for (1) fourteen specified properties in 2013 and (2) eleven specified properties in 2012 and 2013. You inform us you have released some information to the requestor. You claim 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, the district acknowledges, and we agree, you failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). 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

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.

and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 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 552.101 and 552.149 of the Government Code can provide compelling reasons to overcome this presumption. Therefore, we will consider your arguments under these exceptions for the submitted information.

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 provides 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 indicate the district is an “appraisal office” for purposes of section 22.27(a). You state the information in Exhibits 2 and 3 was furnished to the district by property owners in connection with the appraisal of property. You state none of the exceptions in section 22.27(b) apply in this instance. Based on your representations and our review, we find the information in Exhibits 2 and 3 is confidential under section 22.27 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:

(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. *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 Exhibit 4 relates to real property sales and was provided to the district by private entities. You 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 find the district must withhold the information in Exhibit 4 under section 552.149(a) of the Government Code.

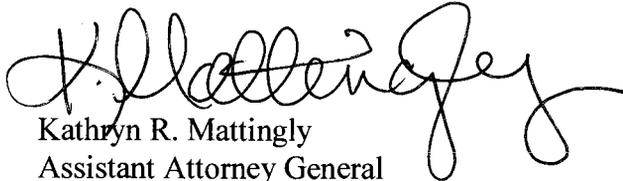
In summary, the district must withhold Exhibits 2 and 3 under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code. The district must withhold Exhibit 4 under section 552.149(a) of the Government Code.

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.texasattorneygeneral.gov/open/>

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Mattingly', written in a cursive style.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 511346

Enc. Submitted documents

c: Requestor
(w/o enclosures)