



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2014

Mr. Tim Kilpatrick
Chief Deputy Appraiser
Comal Appraisal District
900 South Seguin Avenue
New Braunfels, Texas 78130

OR2014-06406

Dear Mr. Kilpatrick:

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# 520156.

The Comal Appraisal District (the "district") received a request for all information related to specified commercial properties. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.149 of the Government Code. Additionally, you indicate release of the submitted information may implicate the proprietary interests of a third party. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from NewQuest Properties ("NewQuest"). We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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

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.

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). The district and NewQuest both 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 information at issue was received “as part of renditions pursuant to section 22.27(a) of the [Tax Code].” You inform us the district has no documentation indicating any of the exceptions in section 22.27(b) apply in this instance. *See id.* § 22.27(b). However, you do not inform us whether the information at issue was provided by property owners. Further, you do not explain whether the submitted sales price information was submitted by property owners under a promise of confidentiality. Thus, we must rule conditionally. To the extent any of the submitted information was provided by property owners in connection with an appraisal, the district must withhold such information under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code; however, any sales price information may be withheld only if it was submitted by property owners under a promise of confidentiality. However, to the extent the submitted information was not provided by property owners in connection with an appraisal and to the extent any sales price information was not furnished by property owners 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, the district and NewQuest both argue any remaining information is subject to section 552.104 of the Government Code. Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The purpose of section 552.104 is to protect a governmental body’s interests in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See Open Records Decision No. 592 (1991)*. Accordingly, we will not consider NewQuest’s argument under this section.

Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Moreover, section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. Open Records Decision No. 541 at 4 (1990).

The district argues the submitted information is subject to section 552.104 of the Government Code because “the individual requesting the information [. . .] owns property and has business interests within and adjacent to” the commercial properties at issue. Upon review, we find the district has not made the required showing of actual or specific harm to the district’s interests in a particular competitive situation. Accordingly, the district may not withhold any remaining information under section 552.104 of the Government Code.

The district and NewQuest also 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 Comal 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). We find any sales price information that was

provided by property owners without a promise of confidentiality is not confidential under section 552.149(a) of the Government Code because it was not provided by a private entity, and thus any such information 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). As noted above, you state the requestor in this instance is a property owner. However, you do not inform us whether a protest was filed regarding a property of which the requestor is an owner or an agent of the owner. If a protest was filed regarding a property of which the requestor is an owner or agent of the owner, 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 a property regarding which a protest was filed, 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 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 a property regarding which a protest was filed, 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.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *Open Records Decision No. 180 at 3 (1977)*. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see Open Records Decision No. 109 (1975)*. If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the

governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, to the extent any of the submitted information was provided by property owners in connection with an appraisal, the district must withhold such information under section 552.101 of the Government Code in conjunction with section 22.27 of the Tax Code; however, any sales price information may be withheld only if it was submitted by property owners under a promise of confidentiality. If the requestor is the owner or the agent of the owner of a property regarding which a protest was filed, 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 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, and must withhold under section 552.149(a) of the Government Code any remaining information that was provided by private entities. If the requestor is not an owner or an agent of an owner of such a property, then the district must withhold the entirety of 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; however, any information that is subject to copyright may be released only in accordance with copyright law.

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 "Claire Morris Sloan", with a stylized flourish at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/ac

Ref: ID# 520156

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Fred Johnson
For NewQuest Properties
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(w/o enclosures)