



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2014

Ms. Catelyn H. Kostbar
Administrative Technician III
Legal Services Division
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR2014-20773

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# 543020 (HCAD Reference No. 14-2936).

The Harris County Appraisal District (the "district") received a request for information pertaining to a named individual and specified address. The district states it will provide some of the requested information to the requestor, but claims some of the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, 552.137, and 552.149 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

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. You also acknowledge, and we agree, the district did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the exceptions you claim can provide compelling reasons to overcome the presumption of openness, we will consider your claimed exceptions for the submitted information. *See id.* §§ 552.007, 302, 352.

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 section 11.48(a) of the Tax Code, which reads as follows:

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).

Tax. Code § 11.48(a). The submitted information includes an application for an exemption that contains a driver’s license number. *See id.* You do not indicate, and it does not appear to this office, the release provisions of section 11.48(b) apply. *See id.* § 11.48(b). Thus, the district must withhold the driver’s license number you have marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 11.48(a) of the Tax Code.

Section 552.101 of the Government Code also encompasses section 22.27 of the Tax Code, which provides:

(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.

(b) Information made confidential by this section may be disclosed:

...

(2) to the person who filed the statement or report or the owner of property subject to the statement, report, or information or to a representative of either authorized in writing to receive the information[.]

Tax Code § 22.27(a), (b)(2). We understand the district is an “appraisal office” for purposes of section 22.27(a) of the Tax Code. The district states the information in Exhibit D was received as part of information rendered to the district by a property owner pursuant to section 22.27(a). You inform us none of the exceptions in section 22.27(b) apply in this instance. *See id.* § 22.27(b). Based on your representations and our review, we find Exhibit D is confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code.

Section 552.101 of the Government Code also encompasses information made confidential by the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002. Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find the information we have marked constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or maintained by a physician. Accordingly, the district must withhold the medical record we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked in Exhibit E satisfies the standard articulated by the Texas Supreme Court in *Industrial*

Foundation. Accordingly, the district must withhold the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code § 552.130.* Accordingly, the district must withhold the information we have marked in Exhibit E under section 552.130 of the Government Code.

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.

Id. § 552.136(a)-(b). You represent the submitted iFile numbers 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 numbers constitute access device numbers for purposes of section 552.136(a). Accordingly, the district must withhold the iFile numbers we have marked in Exhibits F and G under section 552.136(b) of the Government Code. However, we find you have failed to demonstrate the applicability of section 552.136 to any of the remaining information at issue, and the district may not withhold it on that ground.

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). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The addresses we have marked in Exhibit G do not appear to be of a type specifically excluded by section 552.137(c).

Accordingly, the district must withhold the marked e-mail addresses under section 552.137, unless the owners of the addresses affirmatively consent to their release. *See id.* § 552.137(b).

Section 552.149 of the Government Code provides, in relevant part, as follows:

(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[.]

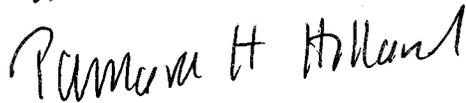
Id. § 552.149(a)-(b). The applicability of subsections 552.149(a) and (b) is limited to those counties having a population of 50,000 or more. *Id.* § 552.149(e). We note Harris County has a population of 50,000 or more. In this instance, you state the information in Exhibit H relates to real property sales and was provided to the district by a private entity. You state the requestor is not the owner of the properties at issue or the agent of the owners. *See id.* § 552.149(b). Based on your representations and our review, we find the district must withhold Exhibit H under section 552.149(a) of the Government Code.

In summary, in conjunction with section 552.101 of the Government Code, the district must withhold: (1) the driver's license number you have marked in Exhibit C under section 11.48(a) of the Tax Code; (2) Exhibit D under section 22.27(a) of the Tax Code; (3) the medical record we have marked in Exhibit E under the MPA; and (4) the information we have marked in Exhibit E under common-law privacy. The district must withhold the information we have marked in Exhibit E under section 552.130 of the Government Code. The district must withhold the iFile numbers we have marked in Exhibits F and G under section 552.136 of the Government Code. The district also must withhold the e-mail addresses we have marked in Exhibit G under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release. The district must withhold Exhibit H 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.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 that reads "Tamara H. Holland". The signature is written in a cursive style.

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 543020

Enc. Submitted documents

c: Requestor
(w/o enclosures)