



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 8, 2016

Ms. Kristen Lee  
Assistant County Attorney  
County of Harris  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2016-24863

Dear Ms. Lee:

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# 631747 (C.A. File No. 16PIA0482).

The Harris County Appraisal Review Board (the "board") received three requests from the same requestor for certain information presented at any hearings during a specified time period pertaining to three specified accounts. You state you do not have information responsive to portions of the request.<sup>1</sup> You claim the submitted information is excepted from

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<sup>1</sup>The 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).

disclosure under section 552.101 of the Government Code.<sup>2</sup> You also state release of the submitted information may implicate the interests of the Harris County Appraisal District (“HCAD”). Accordingly, you notified HCAD of the request for information and of its right to submit arguments stating why its information should not be released. *See* Gov’t Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have received comments from HCAD. We have also received and considered comments from the requestor. *See id.* We have considered the submitted arguments and reviewed the submitted information.

The requestor asserts the submitted information was presented at an open board hearing conducted pursuant to section 41.66(d) of the Tax Code. Section 41.66 governs the hearing procedures of appraisal review boards and provides in relevant part:

(d) Except as provided by Subsection (d-1), hearings conducted as provided by this chapter are open to the public.

(d-1) Notwithstanding Chapter 551, Government Code, the appraisal review board shall conduct a hearing that is closed to the public if the property owner or the chief appraiser intends to disclose proprietary or confidential information at the hearing that will assist the review board in determining the protest. The review board may hold a closed hearing under this subsection only on a joint motion by the property owner and the chief appraiser.

(d-2) Information described by Subsection (d-1) is considered information obtained under Section 22.27.

Tax Code § 41.66(d)-(d-2). Section 41.66(d) provides hearings conducted pursuant to chapter 41 of the Tax Code are open to the public. *See id.* § 41.66(d). However, in response to a joint motion by the property owner and the chief appraiser, the board must conduct a closed hearing. *See id.* § 41.66(d-1). Information produced at a closed hearing is confidential pursuant to section 22.27 of the Tax Code. *See id.* § 41.66(d-2); *see also id.*

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<sup>2</sup>Pursuant to section 552.303(c) of the Government Code, this office sent correspondence to the board on October 4, 2016 requesting you provide additional information necessary for this office to render a decision. *See* Gov’t Code § 552.303(c)-(d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). Because the board did not respond to our request for additional information, we find the board failed to comply with section 552.303(d). However, because section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.303(d), we will consider the board’s claim, notwithstanding the board’s violation of section 552.303(d). *See id.* § 552.303(e); *see also* Open Records Decision No. 150 at 2 (1977).

§ 22.27(a) (making confidential certain information owner of property provides to appraisal office in connection with appraisal of property).

The board and HCAD claim the submitted information is confidential under section 22.27(a) of the Tax Code. However, we are unable to determine if the submitted information was presented at an open board hearing conducted pursuant to section 41.66(d) of the Tax Code. Thus, we must rule conditionally. To the extent the submitted information was presented at an open hearing rather than a closed hearing, then we note the information is not confidential under section 22.27. *See id.* § 41.66(d-1)-(d-2). In that instance, the board must release the submitted information presented at an open board hearing. However, to the extent the submitted information was presented at a closed hearing, then we address the arguments under section 552.101 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. Section 552.101 encompasses section 22.27 of the Tax Code, which provides the following:

(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). As noted above, confidential information disclosed during a closed appraisal board hearing is considered information obtained under section 22.27. *See id.* § 41.66(d-2). The board and HCAD indicate confidential information was discussed during the board hearing. Thus, we find the confidential information is subject to section 22.27. The board and HCAD indicate none of the exceptions in section 22.27(b) apply in this instance. Accordingly, in the event the submitted information was presented at a closed hearing, we conclude the board must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax 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](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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/akg

Ref: ID# 631747

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)