



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 24, 2009

Mr. Joseph T. Longoria  
Perdue, Brandon, Fielder, Collins & Mott, L.L.P.  
Attorneys at Law  
1235 North Loop West, Suite 600  
Houston, Texas 77008

OR2009-11871

Dear Mr. Longoria:

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# 353184.

The Collin County Appraisal District (the "district"), which you represent, received a request for records relating to certain land sales prices. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.148 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must state the exceptions that apply within a reasonable time but not later than the 10<sup>th</sup> business day after the date of receiving the written request. *See* Gov't Code § 552.301(b). You state that the district received the request on

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<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

June 3, 2009. However, the district did not raise section 552.148 of the Government Code until the 15-day deadline, June 24, 2009; therefore, we find the district failed to comply with the procedural requirements of section 552.301 of the Government Code.

The failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.148 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to the requested 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. You contend that part of the requested information is confidential under section 22.27 of the Tax Code. This section 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 state that Exhibits A and B consist of a purchaser’s statement and a sales confirmation survey, respectively, provided by individual taxpayers under a promise of confidentiality. You assert that this information is utilized by the district to create the models and tables that are used by the district to determine the values of property for ad valorem tax purposes and that the district has no other access to this type of information other than its voluntary disclosure by individual taxpayers and other sources. You state that none of the permissible disclosures in subsection (b) of section 22.27 apply in this instance.

Based on your representations and our review, we find that Exhibits A and B are confidential under section 22.27 and must be withheld under section 552.101 of the Government Code.

You assert that Exhibit C is excepted under section 552.148 of the Government Code. Section 552.148 provides in relevant part that “[i]nformation 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 Section 552.021.” Gov’t Code § 552.148. The Texas Legislature has recently amended section 552.148 to limit the applicability of section 552.148(a) to those counties having a population of 20,000 or more. *See* Act of May 29, 2009, 81st. Leg., R.S., S.B. 1813, § 1 (to be codified at Gov’t Code § 552.148(d)); Act of June 3, 2009, 81st. Leg., R.S., H.B. 2941, § 1 (to be codified at Gov’t Code § 552.148(e)). We note that Collin County has a population of 20,000 or more. Subsection (b) of section 552.148 provides:

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. Information obtained under this subsection:

- (1) remains confidential in the possession of the property owner or agent; and
- (2) may not be disclosed or used for any purpose except as evidence or argument at the hearing on the protest.

*Id.* § 552.148(b). Section 41.461(a)(2) of the Tax Code states that at least 14 days before a hearing on a protest, the chief appraiser shall inform the property owner that the owner or the owner’s agent may inspect and obtain a copy of the data, schedules, formulas, and all other information the chief appraiser plans to introduce at the hearing to establish any matter at issue. *See* § 41.461(a)(2) Tax Code.

The legislative history of section 552.148 indicates that it was enacted as a result of the issuance of several open records rulings of this office in which we ruled that information provided by Multiple Listing Services 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 multiple listing services stopped providing sales information to appraisal

districts. The bill analysis of House Bill 2188 states that the purpose of section 552.148 is to allow the relationships between multiple listing services and appraisal districts to continue. HOUSE COMM. ON STATE AFFAIRS, BILL ANALYSIS, Tex. Comm. Substitute H.B. 2188, 80th Leg., R.S. (2007). Because realtors and private appraisers provide information to multiple listing services, we find that the real property sales information that was obtained from realtors and private appraisers is confidential under section 552.148(a). We also find that, to the extent the real property sales information was obtained from multiple listing services or other similar entities, any such information is confidential under section 552.148(a). You state that Exhibit C consists of sales confirmations obtained from a private entity pertaining to commercial property. Therefore, we find that to the extent the information in Exhibit C was obtained from realtors, private appraisers, or a multiple listing service or similar entity, then it is generally confidential under section 552.148(a).

However, you acknowledge that a protest has been filed by the requestor over residential property, but argue that as Exhibit C deals with a commercial property, "it is clearly not relevant to the valuation of residential property." You further assert that "in the intervening time frame between the original request and today date [sic] the taxpayer attended a hearing on the protest and obtained an order determining protest." You thus assert section 552.148(b) is inapplicable in this case as an exception to confidentiality.

Whether the information in Exhibit C is subject to section 552.148(b) is a question of fact. *Id.* § 552.148(b). This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Accordingly, we must accept the district's representation that section 552.148(b) is inapplicable to Exhibit C. Therefore, Exhibit C must be withheld pursuant to section 552.148(a) of the Government Code.

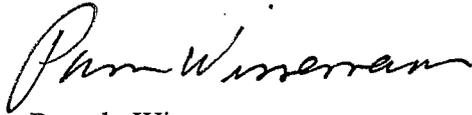
In summary, the district must withhold Exhibits A and B under section 552.101 of the Government Code in conjunction with section 22.27(a) of the Tax Code. To the extent Exhibit C was obtained from realtors, private appraisers, multiple listing services or other similar entities, this information must be withheld under section 552.148 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.oag.state.tx.us/open/index\\_orl.php](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 at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pam Wissemann".

Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/eb

Ref: ID# 353184

Enc. Submitted documents

c: Requestor  
(w/o enclosures)