



ATTORNEY GENERAL OF TEXAS
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November 16, 2009

Mr. James R. Evans
Attorney for Caldwell County Appraisal District
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OR2009-16205

Dear Mr. Evans:

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# 361521.

The Caldwell County Appraisal District (the "district"), which you represent, received a request for all information pertaining to any properties qualifying for special valuation or a reduction in appraised value as an "ecological laboratory" during a specified time period, including information pertaining to a specified property. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.110, 552.137, and 552.149 of the Government Code.¹ You also state you have notified the real property owner of this request for information and of his right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

¹Although you raise section 552.148 of the Government Code, as you acknowledge, the 81st Texas Legislature renumbered section 552.148 to section 552.149 of the Government Code. Act of May 12, 2009, 81st Leg., R.S., ch. 87, § 27.001(39), 2009 Tex. Sess. Law Serv. 208, 376.

Initially, we note that the district failed to raise section 552.137 within the ten-business-day deadline mandated by section 552.301(b) of the Government Code. *See id.* § 552.301(b). Generally, if a governmental body fails to timely raise an exception, that exception is waived. However, because section 552.137 is a mandatory exception that can provide a compelling reason to withhold information, we will consider your argument under this exception. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *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, 381-82 (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).

You assert the submitted information is excepted under section 552.110 of the Government Code. However, we note section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district's arguments under section 552.110 and none of the submitted information may be withheld on that basis. *See Gov't Code* § 552.110; Open Records Decision Nos. 661 at 5-6 (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

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 information made confidential by other statutes. You inform us that the appraisal district is charged with administering special valuations for certain types of agricultural property, including land designated for agricultural use and open space land. *See Tex. Const. art. VIII, §§ 1-d, 1-d-1.* You state that a property owner seeking a special valuation must submit an application, and that the requirements of each application are contained in different subchapters of the Tax Code, and contain different requirements for valuation. Subchapter C of chapter 23 of the Tax Code addresses land designated for agricultural use, while subchapter D addresses qualified open space land. You note that under subchapter C, section 23.45 provides "[a]n application for agricultural designation filed with a chief appraiser is confidential and not open to public inspection." Tax Code § 23.45(a). As you acknowledge, subchapter D contains no similar provision. The applications at issue are open space land valuation applications filed under subchapter D. You argue that "the broad wording of section 23.45 may make information contained in an application filed under subchapter D confidential." We disagree. We find that section 23.45(a) applies only to an application filed under subchapter C. *See Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).* Accordingly, we find that section 23.45(a) of the Tax Code is not applicable to the information at issue, and it may not be withheld under section 552.101 of the Government Code on that basis.

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.

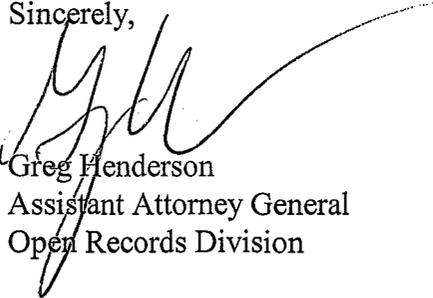
Gov't Code § 552.149(a)-(b). The 81st Texas Legislature amended section 552.149 to limit the applicability of section 552.149(a) to those counties having a population of 20,000 or more. *See id.* § 552.149(d),(e). We note that Caldwell County has a population of 20,000 or more. You state the submitted information was obtained from the property owner. 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 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 the purpose of this statute 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). Accordingly, we find that a property owner is not a private entity as intended by the legislature when enacting section 552.149. Therefore, the district may not withhold the submitted information under section 552.149 of the Government Code.

Section 552.137 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). *See Gov't Code § 552.137(a)-(c)*. The e-mail address at issue is not of a type specifically excluded by section 552.137(c). Therefore, unless the owner of the e-mail address at issue consents to its release, the district must withhold the e-mail address we have marked under section 552.137 of the Government Code. As you raise no further exceptions to disclosure, the remaining information must be released.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID# 361521

Enc. Submitted documents

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