



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2013

Ms. Judith A. Hargrove
Counsel for Victoria Central Appraisal District
Hargrove & Evans, L.L.P.
4425 Mopac South, Building 3, Suite 400
Austin, Texas 78735

OR2013-03442

Dear Ms. Hargrove:

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# 479955.

The Victoria Central Appraisal District (the "district"), which you represent, received six requests from the same requestor for all documents the district utilized to come up with the appraisal value for six specified categories of property, including information the district holds, but does not intend to use in upcoming protest hearings. You state some of the requested information has been provided to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.149 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹ We have also considered comments from the Victoria Area Association of Realtors, Inc. (the "association"). *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

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.

Initially, we note a portion of the submitted information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2011-11338 (2011), 2012-12922 (2012), and 2012-17384 (2012). In those rulings, we determined that (1) to the extent the information at issue was furnished to the district by property owners in connection with the appraisal of property and under promises of confidentiality, the information is confidential under section 22.27(a) of the Tax Code, and must be withheld under section 552.101 of the Government Code; (2) to the extent the information at issue was obtained from a local multiple listing service and the requestor does not have a right of access under section 552.149(b), the information at issue must be withheld under section 552.149(a) of the Government Code; and (3) the district must release any remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the district must rely on Open Records Letter Nos. 2011-11338, 2012-12922, and 2012-17384 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous rulings, we will address your arguments against its disclosure.

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, 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). You indicate the sales surveys in Exhibit C were furnished to the district by property owners in connection with the appraisal of property and were obtained after promises the information would be held confidential or under a district policy of confidentiality. Thus, to the extent the information at issue was furnished to the district by property owners in connection with the appraisal of property and under promises of confidentiality, we find the information is confidential under section 22.27(a) of the Tax Code, and must be withheld under section 552.101 of the Government Code. However, to the extent the information at issue was not furnished by property owners in connection with the appraisal of property and under promises 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. *Cf.* Open Records Decision No. 550 at 7 (1990) (section 22.27 of Tax Code not applicable to information compiled by private market research firm and provided to appraisal district).

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. 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.

Gov't Code § 552.149(a), (b). Section 552.149 applies only to counties that have a population of more than 50,000. *Id.* § 552.149(e). We note Victoria 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 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. *Id.*

You state the sales information in Exhibit D was obtained by the district from a local multiple listing service. However, we have received a letter from the association, which states that the association does not supply sales information from the local multiple listing service to the district because the district is not a member of the association and lacks authorized access to the data. Whether the district obtained any of the information at issue from a local multiple listing service is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Record Decision No. 522 at 4 (1990). Upon review, we find the information at issue is generally confidential under section 552.149(a) of the Government Code.

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). The requestor states he is a property owner and is protesting the valuation of his property by the district. Thus, the requestor may have a right of access to certain information 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. Accordingly, if any of the information at issue pertains to property for which the district's valuation is under protest by the requestor as the property owner, 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 that 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. Conversely, if none of the information at issue pertains to property for which the district's valuation is under protest by the requestor as the property owner, the information at issue must be withheld under section 552.149(a) of the Government Code.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the district must continue to rely on Open Records Letter Nos. 2011-11338, 2012-12922, and 2012-17384 as previous

determinations and withhold or release the identical information in accordance with those ruling. To the extent the sales surveys in Exhibit C were furnished to the district by property owners in connection with the appraisal of property and under promises of confidentiality, the information is confidential under section 22.27(a) of the Tax Code, and must be withheld under section 552.101 of the Government Code. To the extent the sales information in Exhibit D was obtained from a local multiple listing service and the requestor does not have a right of access under section 552.149(b), the information at issue must be withheld under section 552.149(a) of the Government Code. Any 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 479955

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)