ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2013

Mr. Michael B. Gary
Chief Legal Officer
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR2013-12356

Dear Mr. Gary:

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# 493545 (HCAD No. 13-2238).

The Harris County Appraisal District (the "district") received a request for the district's commercial cap rate study for 2013. You claim that the submitted information is excepted from disclosure under section 552.149 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, the district did not comply with its fifteen-business-day deadline under section 552.301(e) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(a), (e). Thus, pursuant to section 552.302 of the Government Code, the submitted information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the submitted information. *See id.* § 552.302; *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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). In general, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.149 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

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 Eighty-second Texas Legislature amended section 552.149 to limit the applicability of subsections 552.149(a) and (b) 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. 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 the multiple listing service (the "MLS") 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 MLS agencies 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 the MLS and appraisal districts to continue. *Id.* In this instance, you state the submitted information relates to real property sales and was provided to the district by private entities. You state the requestor has not represented he is an owner of the properties at issue or the agent of such an owner. Based on your representations and our review, we find the district must withhold the submitted information under section 552.149(a) 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.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,

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 493545

Enc. Submitted documents

c: Requestor
(w/o enclosures)