



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2013

Ms. Judith A. Hargrove
Hargrove & Evans, LLP
Building 3, Suite 400
4425 MoPac South
Austin, Texas 78735

OR2013-14781

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# 497311.

The Victoria Central Appraisal District (the "district"), which you represent, received five requests from the same requestor for sales validations for categories A, C, D, and F properties and for automobile dealerships from January 1, 2012, through April 30, 2013, in Victoria County. You inform us the district has released some information 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 exceptions you claim and reviewed the submitted representative sample of information.¹

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

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.

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 B 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 552.101 of the Government Code also encompasses information made confidential by section 23.123 of the Tax Code, which provides in relevant part:

(a) In this section:

...

(4) "Declaration" has the meaning given it in Section 23.122 of this code.

...

(6) "Statement" has the meaning given it in Section 23.122 of this code.

(b) Except as provided by this section, a declaration or statement filed with a chief appraiser or collector as required by Section 23.121 or Section 23.122 of this code is confidential and not open to public inspection. A declaration or statement and the information contained in either may not be disclosed to

anyone except an employee of the appraisal office who appraises the property or to an employee of the county tax assessor-collector involved in the maintenance of the owner's escrow account.

(c) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who filed the declaration or statement or to that person's representative authorized by the person in writing to receive the information;

(3) to the comptroller or an employee of the comptroller authorized by the comptroller to receive the information;

(4) to a collector or chief appraiser;

(5) to a district attorney, criminal district attorney or county attorney involved in the enforcement of a penalty imposed pursuant to Section 23.121 or Section 23.122;

(6) for statistical purposes if in a form that does not identify specific property or a specific property owner;

(7) if and to the extent that the information is required for inclusion in a public document or record that the appraisal or collection office is required by law to prepare or maintain; or

(8) to the Texas Department of Motor Vehicles for use by that department in auditing compliance of its licensees with appropriate provisions of applicable law.

Tax Code § 23.123(a)(4), (a)(6), (b), (c). To reiterate, section 23.123(a) provides the terms "declaration" and "statement" have the meanings given to those terms in section 23.122 of the Tax Code. We note section 23.122(a)(9) of the Tax Code defines "statement" as the Dealer's Motor Vehicle Inventory Tax Statement required by section 23.122. *Id.* § 23.122(a)(9), (e), (f). You indicate, and the information at issue reflects, Exhibit D consists of Dealer's Motor Vehicle Inventory Tax Statements as defined by section 23.122 that were submitted to the district pursuant to section 23.122 of the Tax Code. There is no indication the requestor has a right of access in this instance under section 23.123(c) of the Tax Code. Accordingly, we find Exhibit D is confidential pursuant to section 23.123(b) of the Tax Code and must be withheld from disclosure under section 552.101 of the Government Code.

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 information in Exhibit C was obtained by the district from a local multiple listing service. Upon review, we find the information at issue is generally confidential under section 552.149(a). However, pursuant to section 552.149(b), a property owner or the owner's designated agent has a right of access to certain information that is otherwise confidential under section 552.149(a). You indicate the requestor is a property owner who 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

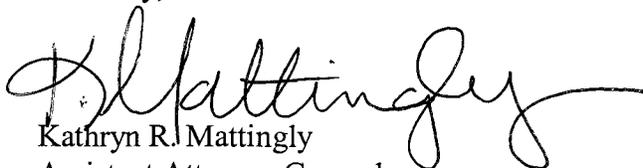
appraiser took into consideration during the appraisal but does not plan to introduce at the hearing on the protest, and comparable sales data from a reasonable number of sales that is relevant to the matter to be determined by the appraisal board. Accordingly, if any of the information at issue pertains 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, then Exhibit C must be withheld under section 552.149(a) of the Government Code.

In summary, to the extent the information in Exhibit B was furnished to the district by property owners in connection with the appraisal of property and under promises of confidentiality, Exhibit B is confidential under section 22.27(a) of the Tax Code, and must be withheld under section 552.101 of the Government Code. Exhibit D is confidential under section 22.123(b) of the Tax and must be withheld under section 552.101 of the Government Code. To the extent the information in Exhibit C was obtained from a local multiple listing service and the requestor does not have a right of access under section 552.149(b), Exhibit C 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.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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 497311

Enc. Submitted documents

c: Requestor
(w/o enclosures)