



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 16, 2014

Ms. Catelyn H. Kostbar  
Legal Services Division  
Harris County Appraisal District  
P.O. Box 920975  
Houston, Texas 77292-0975

OR2014-01026

Dear Ms. Kostbar:

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# 511288 (HCAD Ref. No. 13-2203).

The Harris County Appraisal District (the "district") received a request for the addresses of homes, new and used, that were purchased within a specified period of time for certain zip codes. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.149 of the Government Code. Additionally, you state the release of some of the submitted information may implicate the interests of PropertyInfo Corporation ("PropertyInfo"). Accordingly, you state, and provide documentation demonstrating, the district notified PropertyInfo of the request for information and of its right to submit arguments stating why its information should not be released.<sup>1</sup> See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have

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<sup>1</sup>As of the date of this ruling, our office has not received comments from PropertyInfo.

considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note the requestor seeks only the addresses of certain homes. Thus, any information that falls outside the scope of this request is not responsive. Our ruling does not address the public availability of information that is not responsive to the request, and the district is not required to release non-responsive information.

Next, you acknowledge, and we agree, the district failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the procedural requirements of the Act 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; *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); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because section 552.110 and section 552.149 of the Government Code can provide compelling reasons to withhold information, and because third-party interests are at stake, we will consider the submitted arguments against disclosure of the responsive information.

Section 552.149 of the Government Code provides, in relevant part, as follows:

(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

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<sup>2</sup>We 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 those submitted to this office.

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 responsive information relates to real property sales and was provided to the district by private entities. You state the requestor is not the owner of the properties at issue or the agent of the owner. *See* Gov't Code § 552.149(b). Based on your representations and our review, we find the district must withhold the responsive information under section 552.149(a) of the Government Code.<sup>3</sup>

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](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,



Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 511288

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

PropertyInfo Corporation  
1980 Post Oak Boulevard, Suite 500  
Houston, Texas 77056  
(w/o enclosures)